TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 476.

THE BUTCHERS' BENEVOLENT ASSOCIATION OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED AUGUST 30, 1870.

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a The clerk, in copying this transcript, has omitted pl'ffs' bill of exceptions, which was similar to that copied in the transcript in case of State vs. Fagan, No. of this court & No. 809 of 5th district court, at page 83 of said transcript.

It is agreed that said bill shall be considered as copied in this case in this transcript.

N. O., 22 Dec'r, 1869.

(Signed) JOSEPH P. HORNOR,
For Def't.

1 STATE OF LOUISIANA:

Sixth district court for the parish of Orleans.

BUTCHERS' BENEVOLENT ASSOCIATION
vs.
THE CRESCENT CITY LIVE STOCK LANDING AND Slaughter House Company. } No. 466.

Petition.—Filed May 26th, 1869.

THE STATE OF LOUISIANA,
City of New Orleans, Parish of Orleans:

To the honorable the judge of the sixth district court for the parish aforesaid:

The petition of The Butchers' Benevolent Association of New Orleans, a corporation of this State, and domiciliated in New Orleans, shews that there has existed for more than thirty years past, in the parish aforesaid & the adjoining parishes, the lawful and necessary trade of butchering domestic animals for the markets of New Orleans & the adjacent parishes, and involving the necessity of collecting, sheltering, feeding, slaughtering the said animals; the preparation of their meat & tissues for market; & the securing of their hides, horns, tallow, suet, & other parts for sale or use.

Your petitioners further represents to your honor that in the parishes aforesaid there are about one thousand persons whose occupation is that of butchering, or preparing for market or for selling in market &
2 elsewhere butchers' meat, and the incidental operations connected with the said trade, & that the greater part of these persons have their residence and their establishments in the parishes of Orleans & Jefferson & St. Bernard for the landing, sheltering, feeding, slaughtering, & sale of meat in those parishes, & above the lower line of the city of New Orleans, on the east bank, & above the depot of the New Orleans, Opelousas and Great Western R. R. Co., on the west bank of the Mississippi River, & during all the period aforesaid, & previously, & until the commission of the grievences hereafter mentioned, without any statute, ordinance, regulation, or enactment from any public authority to the contrary.

Your petitioners further represents that in order to facilitate their trade and commerce by the purchase, in large numbers, of cattle for use for the market, & to combine their capital in the purchase so that the individual butchers might obtain their stock at a lower price, & that by the reduction of expenses the price of meat might be reduced, & that aid might be extended to such butchers as belonged to the association,

in case of necessity, a large number of butchers associated themselves, &, under the statutes of Louisiana for the organization of corporations for purposes of the kind, they formed in the year 186~ a body corporate, for the objects aforesaid, & duly subscribed articles of association, obtained the certificate of the district attorney to their validity, & recorded in the office of recorder of mortgages in the parish of Orleans the articles and certificate to which reference is craved as a part of this petition,

3 and whereby your petitioners by the name & style aforesaid were duly and legally incorporated.

Your petitioner further shew that, for the purpose of accomplishing the object of their association, they have erected and hold within the parishes of Orleans & Jefferson, above the lower line of the city of New Orleans, on the east bank of the Mississippi River, slaughter-houses and places for sheltering and feeding of cattle, and have procured stalls in markets & privileges and places for the landing of cattle. And your petitioners carry on within the limits above specified a trade with Texas & other States for the bringing of cattle to said landing-places & places of shelter, and for the purpose of slaughter and sale, as heretofore pursued & prosecuted. & your petitioners aver that there does belong to the said association above four hundred *of* persons whose habitual trade and occupation is that of butchering & the preparation of the flesh and tissues & integuments of said animals for sale and use, & who are immediately concerned, as members of the corporation aforesaid, with its property & business, & who contribute their labor & capital in and about the same.

5. Your petitioners further represents to your honor that their investment of capital and labor as aforesaid, & the provisions requisite for the carrying on the business aforesaid, were made with reference to the constitution and laws of the State, and in the confidence that there was no constitutional or other power in the country to divest them of the right to employ it freely and without restraint, unless the same where wholly prohibited as contrary to the order of the State & the rights of the body politic.

4 6. But your petitioners say that certain persons, whose names are specifically mentioned in an act which seems to have been passed by the general assembly of the State of Louisiana, and at some period or another has obtained the signature of the governor of the State as approved, which act is designated as No. 118 in the acts of the last session of that body, & is entitled "An act to protect the health of the city of New Orleans, to locate the stock landings and slaughter-houses, and to incorporate The Crescent City Live Stock Landing and Slaughter House Company," combining and confederating, craftily & subtly, to injure and wrong your petitioners in this behalf, and fraudulently, corruptly, intending to impose upon your petitioners the necessity of abandoning the objects of their corporation, and to destroy the value of their estate vested in the pursuit and prosecution of their business, & to compel this community to submit to an odious & burdensome monopoly for the profit of said parties and their confederates, against common right and the common interest, did corruptly, fraudulently, and unlawfully procure the enactment of the said act by the use of corrupt, fraudulent, and illegal applications of bribes and other seductive & criminal means with & among the members of the said legislature, and to subserve their own sordid & selfish objects.

7. Your petitioners further represent that, well knowing the said enactment to be a plain and direct violation of the Constitution of the

United States and of the State of Louisiana, and in all of its essential conditions to be contrary to the common right, and oppressive and injurious to the community, & especially to the entire community
5 of those who follow the trade & occupation of butchering and supplying the markets with butchers' meat, the said adventurers & their confederates have organized a corporation, with a capital, as affirmed by them, of one or two millions of dollars, and have commenced erections to carry out their schemes to engross all the trade aforesaid, and have published advertisements, and declared in speeches their purpose to maintain all the odious clauses of the bill aforesaid, and to sue for fines and penalties for any violation of the same, and their purpose to compel all who have landing-places and slaughter-houses, and prepare meat for market in the parishes mentioned in said act, to close them up after the first day of June; & that all vessels from Texas & other States engaged in bringing animals from those States to New Orleans should use their erections and constructions, & pay to them their tolls & duties; & that they would prosecute with suits, day by day, all who in any manner resisted the gross, odious, rapacious, and grasping monopoly which, by corrupt & criminal appliances of money in and among the members of the legislature, they had secured in so far as to have the form and similitude of law. And thus, under the cover and cloak of this enactment, for their own lucre, they propose to oppress and impoverish labor and men whose lives have been lives of laborers; to burden every citizen with a tax upon their daily food for the satisfaction of the greed of these monopolists; to expel from their places of work & from the property prepared at cost & effort more than one thousand butchers in these parishes; & to the oppression and injury of your petitioners, who belong to the said trade & are specially injured in manner aforesaid.

Your petitioners represent that the first clause of the 14th
6 amendment of the Constitution of the United States prohibits the States to abridge the privileges and immunities of citizens of the United States, and secures to all protection from State legislation that involves the rights of property, the most valuable of which is to labor freely in an honest avocation; and the Constitution places under the regulation of Congress commerce between the States, & prohibits interfering legislation by the States; but this enactment confers upon these adventurers the sole & exclusive right to carry on a business in large parishes in which your petitioners and hundreds of others are engaged, & submits them, if the said adventurers shall even permit them to trade, to their domination & control, and burdens them with charges and impositions for their benefit; & the vessels engaged in the commerce of the United States, under their license, are also subject to the impositions of the same bond.

Your petitioners shew that they have real and personal property appropriated to their trade, above the lower line of the city of New Orleans, on the Mississippi River, in said parishs, & which is diminished in value by this monopoly, amounting to five hundred thousand dollars; & that the butchers belonging to the corporation now complaining in this suit are regularly domiciled in Louisiana, have experience in the trade, & have followed the same in this said parishes up to the time of commencing this suit. No judicial proceeding has been commenced against them to show that their trade was unlawfully pursued, or that the property applied thereto was injuriously or harmfully employed. But the measure aforesaid was promoted ounce adopted for the

benefit of persons who, for the most part, men never
7 employed as butchers in the parishes aforesaid, who were without property in the same, whose stake and interest in the community was insignificant, and who had no claim upon the bounty of the State for the vast and exorbitant privileges embodied in the enactment aforesaid.

Your petitioners show that the constitution of Louisiana recognizes the same principles as are contained in the Constitution of the U. S.—equality of right, privilege, & immunity is prescribed; labor is emancipated, & the power to regulate its price denied; life, liberty, property, the pursuit of honorable & just means for promoting happiness and obtaining comfort, are recognized & proclaimed as fundamental law in the State; and that, notwithstanding this, this corporation claims the exorbitant privileges hereafter mentioned, viz, the sole and exclusive privilege of erecting stock-landing & slaughter-houses, and the sole and exclusive privilege of conducting and carrying on the live-stock landing and slaughter-house business within the limits specified in the said enactment, and which comprehends nearly a majority of the population of the State of Louisiana, or the sole and exclusive privilege of receiving and affording shelter to animals brought to New Orleans for sale or slaughter, or to be used for food, & to take valuable portions of the same after slaughter, besides large fees & costs & powers & privileges for collection of costs, prejudicial to the common right.

Your petitioners aver that the whole scope & object of the said enactment was to create a grinding & oppressive monopoly for the benefit of a body of adventurers, & to impose a burdensome tax upon industry & labor for their profit, and that whatever other clauses in the act that have reference to health or police are mere disguises and color-
8 able pretexts to cover from the public gaze the gross features of injustice and oppression contained in the said act. And your petitioners believe, & so charge, that the said corporation has been organized with a capital of two millions of dollars; that its stockholders embrace the governor of the State, a number of the members of the general assembly who participated in its passage, who have found in this a solace for their flagrant violation of their public duty & their flagicious violation of the constitution of the State & of the Union.

11. Your petitioners respectfully represents that the grants aforesaid in said enactment affects the rights of your petitioners in their property & their pursuits. Composed, as their corporation is, of citizens of the State & persons domiciliated in the State, engaged in the trade of butchering in the parishes mentioned in the enactment, they have obtained stock-landings, slaughter-houses, yards, sheds, and other conveniences for the carrying on the trade of slaughtering cattle. They have vested capital, which is employed for the collection and disposing of animals in that business; that this enactment has been made so as to place the further erection and employment of these erections, constructions, and fixed arrangements under the entire dominion of the corporation organized as aforesaid. Within the prohibited limits this corporation have embraced the greater proportion of all such erections, constructions, and objects of convenience with the precise object to destroy them, and they have engrossed the whole trade and business so as to compel its abandonment by your petitioners, or its prosecution as serfs and vassals and tributaries of these monopolists; the design of the whole act be-
9 ing to speculate upon the necessities, wants, comfort, and subsistence of an entire community for their own sordid & selfish profit,

and to dominate tyrannically the members of a large trade in the parishes aforesaid.

12. Your petitioners represent that a combination of a large number of persons interested to sustain such a monopoly was to have been expected. Such an act could never have assumed any form resembling a law except by the fraudulent and corrupt appeals to avarice and cupidity of persons in office, nor could these expect to sustain it except by means of oppressive pursuit of any and all who should contend for their right. And so it is that they have employed attorneys, agents, servants, and contractors to impress upon your petitioners, & others situated as they are, the vast power that has been placed at their disposition. They threaten directly & by their agents with a vast multiplicity of suits all owners of steamships, steamboats, & other vessels who have a license from the United States, & engaged in lawful commerce under the same with Texas and elsewhere, who shall bring animals of your petitioners & others to their existing landing-places, & all persons who shall carry on the slaughter-house or live-stock landing business otherwise than according to their regulations, and who shall sell any butchers' meat or animals which have not been kept or slaughtered at their pens and houses; & by these threats and measures, and arrangements to execute them, they have rendered it difficult for your petitioners to make contracts for the prosecution of their lawful trade already, & have already produced depreciation of their property and diminution in their industry & ways, & impaired their business.

Your petitioners state to your honor that the title of the said
10 enactment is false, misleading, and fraudulent, neither in its language or spirit furnishing what was designed in the 114th article of the constitution of the State; that the proper title of the act would have been "An act to create, for the benefit of the adventurers named, a monopoly of the trade and industry employed in providing for the markets supplies of animals & butchers' meat, and to levy a tax upon the inhabitants of the city of New Orleans and the community about it for their benefit, and to subject the labor of all existing butchers to the control of the adventurers, & to exhibit contempt for the constitutions of the United States & State of Louisiana in their most important provisions by setting them at nought, & to afford help to certain indigent and beggarly officials in the State government."

Your petitioners pray that The Crescent City Live Stock Landing and Slaughter House Company, as organized, be made a defendant, & that citation may issue to them through their president, F. J. Pratt.

And further, your petitioners pray of your honor to consider of the premises, and forthwith to issue a writ of injunction against the said corporation, & directed to them, their agents, attorneys, stockholders, employees, whereby, during the pendency of this suit, they be restrained from asserting, setting up, maintaining, or endeavoring to maintain any exclusive right, pretension, or privilege under said act within the parishes aforesaid, and to declare in the said order that all the existing &
future arrangements of steamships, steamboats, & other craft for
11 landing of animals of any description, and all existing or future arrangements for carrying on the live-stock landing and slaughter-house business, and for the slaughtering, dressing, sale, and disposition of butchers' meat are valid & operative, and in no wise subject to any prosecution, suit, or other procedur by the said corporation, or any other authority under the said enactment, & that they be enjoined from molesting or disturbing your petitioners or other persons from carrying on their trade as heretofore, and that they be required to desist from all

threats, menaces, or declarations adverse to your petitioners' right to conduct their trade and business as heretofore.

And your petitioners pray that judgment may be rendered against the said corporation defendant for the sum of three hundred thousand dollars for the damages already sustained by your petitioners, for the illegal, unjust, & vexatious acts, proceedings, & pretensions of the said defendant.

And your petitioners pray for leave to file, if it should become necessary for additional relief, by injunction or otherwise, upon any fresh violation of their rights, under the Constitution and law of the United States, and the constitution of Louisiana, by the defendants, its agents officers, stockholders, and employees.

And your petitioners pray for such other & further relief & the facts of their case may demand.

(Signed) FELLOWS & MILLS,
(S'g'd) COTTON & LEVY,
(S'g'd) CAMPBELL, SPOFFORD & CAMPBELL,
For Pl'ffs.

Affidavit.

Paul Esteben, being duly sworn, says that he is the president of
12 the Butchers' Benevolent Association of New Orleans mentioned in the foregoing petition, and that all and singular the allegations and statements of fact therein contained are true & correct.

(Signed) PAUL ESTEBEN,
President Butchers' Benevolent Association of New Orleans.

Sworn to & subscribed before me this 26th May, 1869.
(Signed) W'M WOELPER, *Clerk.*

Bond.—Filed 26th May, 1869.

Know all men by these presents that we, The Butchers' Benevolent Association of New Orleans, as principals, and , as surety, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto The Crescent City Live Stock Landing and Slaughter House Company, its president, directors, & stockholders, & all parties in interest, executors, administrators, heirs, and assigns, in the sum of ten thousand dollars, lawful money of the United States of America; for which payment well and truly to be made to the parties last aforesaid, executors, administrators, heirs, and assigns, we bind ourselves in solido, and each of our executors, administrators, heirs, and assigns, firmly by these presents, sealed with our seals, and dated the twenty-sixth day of May, 1869.

Whereas the said Butchers' Benevolent Association of New Orleans has this day presented a petition to the sixth district court for the parish of Orleans, praying a writ of injunction to issue in the case of The Butchers Benevolent Association of New Orleans vs. The Crescent City Live Stock Landing & Slaughter House Company, No. 466, docket of this court:

13 Now, the condition of the above obligation is, that we, the above-bound principal and surety, will well and truly pay to the said Crescent City Live Stock Landing & Slaughter House Company of New Orleans, and all parties in interest, the defendant in said injunction, all such damages as said defendants may recover against us in case it

should be decided that the said writ of injunction was wrongfully obtained.

(Signed) PAUL ESTEBEN, [SEAL.]
President of B. B. A.
(Signed) JOHN WEBER. [SEAL.]
" FRANK HENER. [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) J. B. COTTON.

Order.

Let an injunction issue as prayed for, on the petitioner giving bond and security in the sum of ten thousand dollars, conditioned as the law requires.

May 26th, 1869.
(Signed) W. H. COOLEY, *Judge.*

Writ of injunction.

THE BUTCHERS' BENEVOLENT ASSOCIATION of New Orleans
vs.
THE CRESCENT CITY LIVE STOCK LANDING & Slaughter House Co.
No. 466.

STATE OF LOUISIANA,
Sixth District Court for the Parish of Orleans:

The State of Louisiana to The Crescent City Live Stock Landing
14 & Slaughter House Company, thro' F. J. Pratt, its president, greeting:

You are hereby commanded, enjoined, & restrained, in the name of the State of Louisiana and of the sixth district court for the parish of Orleans, from asserting, setting up, maintaining, or endeavoring to maintain, any exclusive right, pretension, or privilege, under the act passed by the general assembly of the State of Louisiana, designated as No. 118 in the acts of the last session of this body, and entitled "An act to protect the health of the city of New Orleans, to locate the stock-landings and slaughter-house, and to incorporate The Crescent City Live Stock Landing and Slaughter House Company," within the parishes of Orleans and adjacent parishes.

And you are further enjoined and restrained from molesting or disturbing the plaintiff or other persons from carrying on their trade of butchering domestic animals for the markets of the city of New Orleans & the adjacent parishes, and the collecting, sheltering, feeding, and slaughtering the said animals, and the preparation of their meat and tissue for market, and the securing their hides, horns, tallow, suet, & other parts for sale or use. And you are further enjoined from threatening or menacing the plaintiffs in their right to conduct their trade & business, as heretofore.

And herein fail not under penalty of the law.

Witness the Honorable William H. Cooley, judge of our said court, this 26th day of May, in the year of our Lord one thousand eight hundred and sixty-nine and in the ninety-third year of the independence of the United States.

15 [SEAL.] (Signed) S. C. DAVIS, *D'y Clerk.*

Sheriff's return on writ of injunction.

Received May 26th, 1869, at 15 minutes after 4 o'clock p. m., and on the same day, at eleven o'clock p. m., served a copy of the within writ of injunction personally on F. J. Pratt, president of The Crescent City Live Stock Landing & Slaughter House Company, defendants herein. Returned May 27th, 1869.

(Signed) M. D. WALSH, *D'y Clerk.*

Citation.

BUTCHERS' BENEVOLENT ASSOCIATION
vs.
THE CRESCENT CITY LIVE STOCK LANDING & Slaughter House Co. } No. 466.

STATE OF LOUISIANA,
Sixth District Court for the Parish of Orleans:

The Crescent City Live Stock Landing & Slaughter House Company, thro' its president, F. J. Pratt:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same, in the office of the clerk of the sixth district court for the parish of Orleans, in ten days after the service hereof.

Witness the Honorable W'm H. Cooley, judge of the said court, the 27th day of May, in the year of our Lord 1869.

[SEAL.] (Signed) W'M WOELPER, *Clerk.*

Sheriff's return.

Received May 27th, 1869, and on the 28th day of the same month and year served copy of the within citation and accompanying peti-
16 tion on The Crescent City Live Stock Landing & Slaughter House Company, defendants herein, by leaving the same at the office of said company, corner of Common & Carondelet streets, in the hands of a white person above 14 years of age, who, being interrogated by me, told me that his name was S. B. Pratt; that he did not know whether he was employed in said office; and that neither the president nor the secretary of said company was present in the office at the time.

Ret'd same day.

(Signed) PHIL. LACOSTE, *D'y Sh'ff.*

Rule.

IMBAU, AYCOCK & CO., & BUTCHERS' BENEV'T Association,
vs.
THE CRESCENT CITY L. S. LANDING & SLAUGHTER House Co. } Nos. 471 & 446.

STATE OF LOUISIANA,
Sixth District Court for the Parish of Orleans:

TUESDAY, *the 1st day of May*, '69.—Present, the Honorable W'm H. Cooley, judge.

On motion of W'm H. Hunt, att'y for def'ts, it is ordered that the plaintiffs shew cause, on Saturday, 5th June, 1869, at 10 o'clock a. m.,

why the injunctions herein issued should not be set aside on the defendants executing bond with good and sufficient surety, conditioned according to law, in the case of Imbau, Aycock & Co., in such sums as the court may order in each case.

Extract from the minutes.

[SEAL.] (Signed) S. C. DAVIS, *D'y Clerk.*

Sheriff's return.

Received June 1st, 1869, & on the 2d day of same month
17 and year served copy of the within rule personally on Mills, esqr. of the firm of Fellows & Mills, atty's for plaintiffs.

Returned same day.

(Signed) A. F. LYND, *D'y Sh'ff.*

Answer to rule.—Filed 5th June, 1869.

THE BUTCHERS' BENEVOLENT ASSOCIATION of N. O.
vs.
THE CRESCENT CITY STOCK LANDING & Slaughter House Co.
} No. 466.

STATE OF LOUISIANA,

Parish of Orleans, Sixth District Court:

In opposition & answer to the rule of the defendants in this suit, returnable the 5th day of June, relative to giving a bond to release from the injunction of this court, the said plaintiffs say that the defendants ought not to be heard to make any motion relative thereto, for that the said defendants, after a discovery that an application to this court for the injunction aforesaid, and after learning that the court had granted the order for an injunction to issue, & while the plaintiffs were diligently proceeding to give bond, & to cause the writ to be issued & served, contemptuously, and with the purpose to elude, obstruct, and defeat the execution of the said order, and to involve this court in contention with another court, and to bring reproach upon judicial administration in this parish, did apply to the judge of the 5th district court of the parish for an injunction against your petitioner, the precise effect & object whereof was to interfere with, & to defeat the operation of, the order of your honor, and the rights recognized by the same.

18 These respondents submit to your honor the petition, order, citation, & injunction served upon them, & they aver that no application was made for an injunction, nor any proceeding filed in the said court, until it was known to the employees of the said corporation of the proceedings in this court.

The plaintiffs aforesaid (respondents to the rule) submit to the court that the conduct of the said corporation, of its officers, agents, & attorneys herein is a contempt of the court, & that until they shall purge themselves of their contumacy and disobedience, that they ought not to be heard in this court, & they respectfully submit to *to* the court the matters of facts aforesaid; that the court may direct such other inquiries and adopt such other measures as may vindicate the order of the court & secure proper respect for judicial administration.

(Signed) FELLOWS & MILLS,
" COTTON & LEVY,
" CAMPBELL, SPOFFORD & CAMPBELL,
For Respondents.

Note of evidence.—Filed 5th June, 1869.

BUTCHERS' BENEVOLENT ASSOCIATION
vs.
THE CRESCENT CITY LIVE STOCK LANDING & Slaughter House Co. } No. 466.

SIXTH DISTRICT COURT:

Note of evidence on trial of rule:

Defendant in rule offer in evidence copy of petition of The Crescent City Live Stock Landing & Slaughter House Co. in the 5th district court, filed this day, & marked "A."

19 It is admitted that the order for injunction issued in the case No. 466, being the suit of The Butchers' Benevolent Association vs. The Crescent City Live Stock Land'g & Slaughter House Co., was signed by the judge of this court before 11 a. m., on the morning of 26th May, 1869, & handed to the clerk; that the bond was furnished to the clerk between half past three o'clock p. m. a quarter of 4 o'clock p. m.

It is admitted that in the case of The Crescent City Live Stock Landing and Slaughter House Co. vs. The Butchers' Benevolent Association, brought in the 5th district court, the order for the injunction was signed at 12 o'clock m., on the 26th May, 1869, and served by the sheriff at 2 o'clock p. m.

In the suit No. 466 the writ was received by the sheriff on the 26th May, 1869, at 15 minutes past 4 p. m., and on the same day, at 11 o'clock p. m., the sheriff served a copy of this writ on Mr. Pratt, president of The Crescent City Live Stock *and* Landing & Slaughter House Company.

Closed.

Rule absolute, &c.

Extract from the minutes of 5th June, 1869.

Present, the Honorable W'm H. Cooley, judge.

BUTCHERS' BENEVOLENT ASSOCIATION
vs.
CRESCENT CITY LIVE STOCK LANDING & Slaughter House Co. } No. 466.

The rule taken in this case by the defendants on the plaintiffs, to
20 shew cause why the writ of injunction herein issued should not be set aside, came on this day for trial; W'm H. & Randell Hunt for pl'ffs in rule; Fellows & Mills, Cotton & Levy, and Campbell, Spofford & Campbell, for def'ts in rule.

Counsel for defendants in rule filed said defendants' opposition & answer to said rule, alleging therein contumacy, disobedience, and contempt of the order of the court on the part of plaintiffs in rule, and praying the court to vindicate its order, &c.

After hearing pleadings, testimony, and argument of counsel, the court, for the reasons orally assigned in open court, considering the law and the evidence to be in favor of pl'ffs in rule—

It is ordered that the prayer of defendants' answer to the rule charging contempt be overruled, plaintiffs in rule not being guilty of said charge.

It is further ordered that the rule taken by the defendants in suit be made absolute, and the writ of injunction herein issued be set aside & dissolved, on the defendants in suit executing bond, with good & sufficient surety, conditioned according to law, in the sum of one hundred thousand dollars.

Petition in suit entitled "Crescent City Live Stock Landing and Slaughter House Company vs. Butchers' Benevolent Association of N. Orleans, No. 585 of the 5th dist. court for the parish of Orleans."

Offered in evidence by pl'ffs in suit & def'ts in rule on 5th June, 1869.

To the hon. the judge of the fifth district court of the parish of Orleans:

The petition of The Crescent City Live Stock Land. and Slaughter House Co., a body corporate under the law of Louisiana, re-
21 spectfully shews—

That said corporation is authorized by law to establish and erect wharves, stables, buildings, etc., necessary to land, stable, shelter, protect, and preserve all kinds of horses, mules, cattle, and other animals from & after the time such buildings, etc., are ready and complete for business, and public notice thereof given; and that the sole and exclusive privilege of conducting and carrying on the live-stock landing & slaughter-house business of cattle and other animals destined for sale and slaughter in New Orleans and its environs, is conferred exclusively upon petitioners, as is fully set forth in the act of incorporation aforesaid.

That your petitioners have erected the buildings, etc., & given the notice required by law, & are now ready & about to proceed to the discharge of the duties devolving on them upon the 1st day of June, 1869.

That The Butchers' Benevolent Association of New Orleans, a corporation created by law, are about to land, stable, shelter, protect, and preserve horses, cattle, etc., and to conduct and carry on the live-stock landing and slaughter-house business within the limits prohibited by law, and in violation of rights and privileges exclusively conferred upon petitioners by their act of incorporation.

That said association has declared its purpose to do said acts, and to conduct said business, and will proceed so to do unless restrained by law.

That said association and its members have publicly declared their intention of thwarting, harasing, interfering with, and preventing
22 your petitioners in the discharge of the duties imposed upon them by law, and of appropriating to themselves the privileges exclusively belonging to petitioners; and that petitioners fear that they will carry out their intentions, & inflict immediate and irreparable injury upon your petitioners unless enjoined from so doing by law.

That the illegal and wrongful declarations and acts of the said defendants have caused petitioners damages to the amount of five thousand dollars, and for which the said association is responsible to petitioners.

Wherefore petitioners pray that, in consideration of the annexed bond and affidavit, *that* process of injunction may issue herein, directed to The Butchers' Benevolent Association, enjoining and prohibiting the president & members of said association from landing, stabling, sheltering, protecting, and preserving cattle, horses, &c., & other animals destined for sale & slaughter in New Orleans, & from conducting and carrying on the live-stock landing and slaughter-house business within the limits of the parishes of Orleans, Jefferson, & St. Bernard, and from

molesting and interfering with the plaintiffs in the exercise and enjoyment of the rights and privileges conferred upon them by law, from and after the first day of June, 1869; that The Butchers' Benevolent Association may be duly *duly* cited to appear and answer, through Paul Esteben, its president; and that, after all due and legal proceedings, the said injunction may be perpetuated, and the said defendants condemned to pay to your petitioners the said sum of five thousand dollars.

& they pray for such other & further order and relief as nature of the case may require.

(Signed) WILLIAM H. HUNT.

23 *Affidavit.*

F. J. Pratt, being duly sworn, deposes that he is the president of The Crescent City Live Stock Landing & Slaughter House Co.; that the facts & allegations so set forth in the above petition are true and correct; that the said defendants will proceed to thwart and obstruct the lawful business of the company, and will shelter, stable, protect, and preserve cattle, horses, &c., all of which rights, privileges, and advantages have been exclusively conferred upon the said company by their act of incorporation; & that the said company will thereby sustain irreparable injury, unless the said defendants be restrained by process of injunction.

(Signed) F. J. PRATT.

Sworn to & subscribed before me this 26th May, 1869.

(Signed) PHILIP POWER, JR., *Dy Clerk.*

Order.

Let a writ of injunction issue, as within prayed for, upon pl'ff giving bond, with good & solvent security, in the sum of five thousand dollars, conditioned as the law directs.

New Orleans, May 26th, 1869.

(Signed) CHA'S LEAUMONT, *Judge.*

Rule.—Filed 5th June, 1869.

BUTCHERS' BENEVOLENT ASSOCIATION *vs.* THE CRESCENT CITY LIVE STOCK LANDING & Slaughter House Co. } No. 466.

STATE OF LOUISIANA,

Sixth District Court for the Parish of Orleans:

SATURDAY, *the fifth day of June*, 1869.—Present, the Honorable W'm H. Cooley, judge.

24 On motion of Campbell, Spofford & Campbell, Cotton & Levy, & Fellows & Mills, of counsel of plaintiffs in the above-entitled & numbered cause, and on representing to the court that they are aggrieved by the final judgment rendered on the 5th June, 1869, in the matter of the rule taken by said defendant to have the injunction granted in this cause set aside on said defendant furnishing bond in the sum of one hundred thousand dollars, and that said judgment will cause to plaintiff an irreparable injury—

It is ordered that said defendant show cause, on 12th June, 1869, at 10 o'clock a. m., why a suspensive appeal should not be allowed and granted in this cause to said pl'ffs from said judgment, returnable to the supreme court of the State of Louisiana, on said plaintiff furnishing bond in the sum of dollars, conditioned according to law, with good & solvent security.

And it is further ordered that the order & judgment to bond be stayed till the final hearing of this rule.

Extract from the minutes.

[SEAL.] (Signed) W'M WOELPER, *Clerk.*

Sheriff's return.

Received June 7th, 1869, and on the same day, before the hour of 12, served a true copy of within rule on F. J. Pratt in person.

Returned same day.

(Signed) J. F. DICK, *D'y Sh'ff.*

Defendants' bond.—Filed 5th June, 1869.

Know all men by these presents that we, The Crescent City Live Stock Landing & Slaughter House Co., as principal, and as security, of the city of New Orleans, and State of Louisiana, are held and firmly bound unto The Butchers' Benevolent Association of New Orleans in the sum of one hundred thousand dollars, lawful money of the United States of America, to be paid to the said Butchers' 25 Benevolent Association of N. Orleans, heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, administrators, firmly by these presents, sealed with our seals, and dated the 5th of June, in the year of our Lord 1869.

Whereas the said Crescent City Live Stock Landing and Slaughter House Co. has this day been permitted by the hon. the sixth district court of New Orleans to set aside the writ of injunction issued herein in the suit No. 466 of the docket of said court, pursuant to an order of court this day rendered:

Now, the condition of the above obligation is, that we, the above-bound Crescent City Live Stock Landing & Slaughter House Co. and said will well and truly pay to the said *said* Butchers' Benevolent Association of New Orleans all such damages as they may sustain or be caused to them by the order aforesaid setting aside said injunction and dissolving the same upon bond, & all damages they may have sustained by the act of said company if a difinitive judgment be rendered against them in the suit pending as aforesaid.

(Signed) F. J. PRATT,
Pres't C. C. L. S. L. & S. H. Co.
" JONAS PICKLES, *for* $20,000.
" JOHN LOCKWOOD, *for* $20,000.
" CH'S T. HOWARD, *for* $20,000.
" R. T. PACKWOOD, *for* $20,000.
" W'M DURBRIDGE, *for* $20,000.
" E. B. BENTON, [L. S.]
" JONAS PICKLES, *for* $20,000.

Signed, sealed, & delivered in the presence of—
(Signed) W'M H. HUNT.

Testimony on rule.

Sixth district court for the parish of Orleans.

26 IMBAU, AYCOCK & CO., & BUTCHERS' Benevolent Association, *vs.* THE CRESCENT CITY LIVE STOCK LANDING & Slaughter House Co. } Nos. 471 & 466.

Testimony taken on rule in open court, June 5th, 1869.

Mr. W'M O. DENEGRE sworn & examined for defendant & pl'ffs in rule:

Q. Is that petition written in your handwriting?

A. Yes, sir; this is my handwriting.

Q. What time did you write that petition?

A. It was written, as well as I can recollect now, between nine & ten o'clock—¼ past nine o'clock on the morning of the day on which the writ was issued—in my office.

Q. Are you the att'y of this corporation?

A. I am the assistant att'y, as you may properly term it.

Q. Did you see the judge sign the order of injunction in the case of The Butchers' Benevolent Association vs. The Crescent City Live Stock Landing & Slaughter House Company?

A. I did not.

Q. Did you know the injunction had been taken out?

A. I came down in the morning & was speaking to you, as on several occasions, in reference to several matters. I saw you with a number of gentlemen, but had no suspicion at that time that you were going out an injunction. You mentioned the fact that that was the Butchers' Association, and seeing you there in company with Mr. Mills, who I knew was one of their att'ys, the idea suggested itself to my mind that you were taking this action; I had no conviction; it was a mere supposition of mine.

27 Q. After the injunction had been signed by the judge, and passed into the hand of the clerk, did you then learned it?

A. No; I did not. I know nothing of it; even then I merely suspected.

Q. What made you suspect the injunction or an order for injunction had issued?

A. The simple fact I saw you (Judge Cotton) there with these butchers.

Q. Did you not come to the door & had a conversation with Mills touching the issuing of this injunction?

A. No; the only conversation I had was addressed to you, Judge Cotton, and it was only three or four words, & then I left.

Q. Did you learn from any one that the injunction or order for injunction had issued by the judge.

A. I did not; I know nothing about it.

Q. Do you recollect W'm H. Hunt comming to the door while the judge was signing the order.

A. No.

Q. Did you come to the doore of the roome yourself before or after the injunction was signed?

A. I cannot tell what time it was I went to the doore. I saw you there; it must have been somewhere near eleven o'clock; probably a little after; it may have been between eleven and twelve I saw you.

Q. At the time you had this conversation with me, (Judge Cotton,) was that petition finished?

A. That petition was delivered into the hands of the secretary of the Slaughter House Co. before eleven o'clock, probably half past ten o'clock, that day. I went there for the purpose of seeing Mr. Pratt and getting him to sign it. He was not there, but I heard he was at that time over at the works. I addressed the letter to Mr. McKee, requesting Pratt to sign the bond and to come over to the 5th district court imme-

28 diately, that we were to take out a writ of injunction.

Q. At the time you spoke to me, in the morning, the time that you suspected we were taking a writ, was your petition then completed?

A. Yes, sir; and had been in the hands of the secretary of their association fully half an hour. I wrote it in the office and walked down there with it.

Q. Did you fill in the name of The Butchers' Benevolent Association?

A. Yes, sir.

Q. Did you know at the time who the president was?

A. Of the president of The Butchers' Benevolent Association? I knew what his name was.

Q. When did you get possession of this petition after your interview with me?

A. I did not see it any more; it was handed to Mr. Hunt by Mr. Pratt; I had nothing more to do with it after that.

Q. Did you speak to Mr. Hunt of your impression after your interview with me?

A. Yes, sir; I went up stairs & told him that these gentlemen were going to get out an injunction.

Q. Did Mr. Hunt & you speak to Pratt about it?

A. I did not see Mr. Pratt until twelve or one o'clock—half past twelve.

Q. This conversation was with Mr. Hunt before you obtained the order from Judge Leaumont?

A. I can't say whether it was not. I think Mr. Pratt was at the other side and had then possession of the petition; and it must have been some time after eleven o'clock I saw Mr. Hunt, for I went from here up-stairs and met him there, and said, "I believe these gentlemen are about getting out an injunction."

Q. My question is, to know whether this information was im-

29 parted to Mr. Hunt before the order of the judge of the 5th district court was obtained.

A. I think it was; my memory is not very distinct in reference to that.

Q. This conversation between you and I took place before 11 o'clock?

A. Something along there; I cannot tell what hour, but immediately after my comming there.

Q. You went from this court-room to what part of this building to find Mr. Hunt?

A. I think I saw him in the fifth district court. I think it was there I mentioned my suspicion to him.

Q. After the conversation with Mr. Hunt, state to us what you did in the matter.

A. I went away then and did not return until nearly one o'clock.

Q. Where did you go?

A. I went across the river.

Q. Did you see Mr. Pratt?

A. No.

Q. Did you see this agent you send over to Pratt?
A. I did not.
Q. Who did you see over there?
A. No one at all; I went on one ferry-boat & came back on the same. I didn't land at all, as I understood Mr. Pratt had come to this side of the river; so I returned.
Q. For what purpose did you go over there?
A. To tell Mr. Pratt come over and attend to the matter.
Q. And take out an injunction, to take an affidavit, & sign a bond?
A. That was my object in going.
30 Q. What agent went over for Mr. Pratt?
A. A servant of the company went there.
Q. What hour of the morning did you send him over there *at*?
A. I left the petition, probably, at a quarter past ten o'clock.
Q. Had you learned, up to that hour, that this application had been prepared by the att'ys of The Butchers' Benevolent Association, and submitted to the court the day previous?
A. I knew nothing in the world about the matter. My first suspicion was aroused at seeing you there at 11 o'clock; that was the first suspicion I had.
Q. Tell us why you suspected The Butchers' Benevolent Association would take out an injunction; and, what was it caused you to draw up this petition against The Butchers' Benevolent Association.
(Objected to.)
Q. When did you learn first that Butchers' Association was going to take proceedings against The Slaughter House Company?
A. I think the next Monday after the issuing of your writ.
Q. When did you first conclude to enjoin The Butchers' Association?
A. I did not come to any conclusion at all in reference to it. Mr. Hunt was counsel. I merely wrote the petition at his dictation.
Q. When did you & Mr. Hunt come to that conclusion?
A. Mr. Hunt came to the office that morning and said, "I believe I will take out an injunction against that Butchers' Benevolent Association."
Q. Did he say to you; why?
A. I don't know that he did.
Q. At what hour in the morning was it Mr. Hunt directed you
31 to draw up the petition?
A. About a quarter past nine I commenced drawing up the petition.
Q. Then you did learn at that hour that The Butchers' Benevolent Association intended to enjoin The Slaughter House Company?
A. No. I knew nothing in the world about until the next morning; it was then I learned for the first time they had taken out an injunction.
Q. What do you mean by this expression in your petition——
(Counsel was interrupted by an objection being made by opposite counsel, and question withdrawn.)

WM H. HUNT, sworn and examined for pl'ffs in rule, says:

I will state in this case I knew some three or four weeks that there had been a consultation between certain parties. I never who were combining to resist the operation of this statute; that these parties had employed, or were about to employ, Judge Campbell, Cotton & Fellows, & Mills as their counsel. I waited for some time with some anxiety to learn what steps they might take of an aggressive character.

I saw them make no movement. On consultation with my clients the evening before the issuing of this injunction, I learned that it was likely that these gentlemen were to be retained on the following day, and, on being retained, would than be likely to take some action; the nature of that action, and the time when it was to be taken, were entirely matters of doubt with me. I learned that on the night before, on a consultation I had with my clients, the officers of The Slaughter House Company. I revolved the matter in my own mind; I knew the old maxim;
32 and the next morning I consulted with my colleague, and suggested this course: that inasmuch as my clients had under the law an exclusive privilege, they were entitled to protect it by writ of injunction.

I thereupon, at 9 o'clock in the morning, after consultation with my associate counsels, my brother—I didn't have an opportunity of seeing Mr. Roselius that morning, who is also a counsel with us in that matter—I reported at my office and dictated that petition. I signed it. I was down here at 10 o'clock, during rule hour, before the court that day. Before I left my office I gave Mr. W. O. Denegre instructions, or request rather, to go and get Captain Pratt, and bring him down; I thought it best to make haste with that injunction. I arrived at the court at 10 o'clock and went on with my business. As I passed out I saw Judge Cotton surrounded by two or three persons in the private office of the court; one of whom was writing, apparently making an affidavit or signing a bond. I suspected at once that there was some action meditated against my clients. I jumped into a cab, rode up Pratt's office, found he was across the lake; found Denegre had been there—had sent a messenger after him. I came down here, and after a while W. O. Denegre came up-stairs and informed me what I had already known, for I was waiting with the judge for the arrival of Pratt, to get an affidavit sworn to and an injunction issue.

These are the facts. The injunction was issued about twelve o'clock.

Q. Tell us who it was you consulted with the night previous.

33 A. With my clients.

Q. With the president of the company?

A. Yes, sir; and the other officers—two of them, I think.

Q. Did you learn from these officers that The Butchers' Association had presented a petition to the judge of this court the day previous to that, or upon that day?

A. No; on the contrary, I learned, and it was so stated, that the probability was that all opposition on the part of the butchers would be withdrawn probably the next day, inasmuch as it was anticipated that, by the withdrawal of certain influential parties who were connected with this association, it would be left powerless to employ counsel.

Q. What caused you, then, to apprehend, or rather to conclude, that there would be an injunction taken by that association?

A. I suspected it.

Q. When did you first suspected?

A. I heard it that night. I was assured these people would not probably come up to terms. That was the expression employed in conversation with me. I don't say I learned this from my clients. I learned this in their presence. I decline saying from whom.

Q. The morning you saw me in the room, when you passed through, did you know it; where did you from; did you go to the 5th court?

A. I went to the cab.

Q. You did not go to the 5th court?

A. I may have gone to the 5th court; I rode up in the cab and back again.

Q. What time did you find Mr. Denegre?

A. He came there after I was there—about half past eleven
34 o'clock. I cannot be sure as to the time, but he was there some little time before Pratt arrived, and I sent him across the river because I began to be more certain that you (Judge Cotton) intended to take some action.

Q. Did Denegre tell you he was satisfied we were going to take out a writ?

A. Yes, sir; he told me he had seen you in conversation with somebody, & he believed it was with the president of The Butchers' Association; but I knew it before, and had acted before; I had gone up town, & got back again. I had dispatched another messenger across the river.

Q. You then imparted your impression to Pratt; you told him about what we were doing?

A. I met him in the 5th district court, & said, "Where have you been?" He asked, had I not issued it? I said, "I am afraid these people have taken some process against us," or something to that effect; but I didn't know it was an injunction. I never dreamed you would enjoin the statute, and I don't believe you can.

Exception.—Filed June 10th, 1869.

BUTCHERS' BENEVOLENT ASS'N
vs.
CR. CITY L. S. LANDING & SLAUGHTER HOUSE CO. } No. 466.

SIXTH DISTRICT COURT:

Now come the defendants & except to the petition herein filed against them upon the following grounds, viz:

1°. That said petition sets forth no legal cause of action against said defendants.

2°. That the allegations of said petition are impertenent, scan-
35 dalous, & criminous; that it contains general, loose, & railing accusations against these defendants, without certainty, specification, or detail, charging that they did corruptly, fraudulently, & unlawfully procure the enactment of the statute by which they became incorporated, by the use of bribes & other seductive & criminal means with & among the members of the legislature; that it charges the defendants with being a band of adventurers, in the sense of being disreputable persons who live by chance, who are without property, & *are without property &* are without stake in the community; that it charges that the stockholders embrace the governor of the State & a number of members of the general assembly who participated in the passage of the act of incorporation in flagrant violation of their public duty, & with flagitious violations of the constitutions of the State & of the Union, & to afford help to certain indigent & beggarly officials in the State government; that the whole tenor of said petition is to scandalize & defame these defendants & the legislatve & executive departments of the government, & to bring them & the law into odium and contempt; that it alleges matters which it is unbecoming the dignity of the court to hear, & charges persons with crimes & misdemeanors & misconduct & corruption not only not necessary to be shewn in

the cause, but which could not lawfully be shewn even if they were true, as these defendants aver them not to be.

Wherefore defendants say that said petition ought not to be entertained, & they pray to be hence dismissed, with costs, & for all general & equitable relief.

(Signed) WM H. HUNT.
" C. ROSELIUS & ALF. PHILIPS.
" RANDELL HUNT, *of Counsel.*

36 *Rule submitted.—Extract from the minutes of 12th June*, 1869.

Present, the Honorable W. H. Cooley, judge.

BUTCHERS' BENEVOLENT ASS'N
vs.
CR. CITY L. S. LANDING & SLAUGHTER HOUSE CO. } No. 466.

The rule taken in this matter by the pl'ff on the d'f't why a suspensive appeal should not be granted to the supreme court from the judgment herein rendered on the 5th June, 1869, came on for hearing, Campbell, Spofford & Campbell, Cotton & Levy, Fellows & Mills, & Cooley & Philips for plaintiffs; W'm H. & Randell Hunt & Roselius & Philips for defendants.

After hearing argument of counsel, the court took the rule under advisement.

Reasons, &c.—Filed 14th June, 1869.

BUTCHERS' BENEVOLENT ASS'N
vs.
CRESCENT CITY L. S. LANDING AND SLAUGHTER HOUSE CO. } No. 466.

IMBAU & AYCOCK & CO.
vs.
SAME. } No. 471.

SIXTH DISTRICT COURT FOR THE PARISH OF ORLEANS:

The only point to be decided is, whether the plaintiffs are entitled to a suspensive appeal from the order recently made dissolving the injunction, upon defendants giving bonds in specified sums. The plaintiffs, alleging various ways in which they would be injured if the defendants were allowed to exercise certain privileges & franchises granted
37 to them by an act of the last legislature, & also alleging the unconstitutionality of the said law, obtained from this court, ex parte, an injunction restraining & prohibiting the defendants from exercising the rights, privileges, & franchises conferred upon them by the law of the legislature. Subsequently the defendants applied to have the injunction dissolved upon their giving bond & security. This application was examined in a proceeding in which full opportunity for defence was afforded to the plaintiffs, and resulted, as already stated, in an order dissolving the injunction.

It is admitted by both sides that the order dissolving the injunction is but interlocutory in its nature; but plaintiffs argue that it may work irreparable injury to them, and, therefore, by virtue of art. 566, C. P.,

they can suspend its operation by an appeal. It is true the terms of article 566, C. P., would seem to cover a case like the present, but it is believed that such was not the intention of the law-giver. In my opinion, a distinction, obvious & plain, must be made, otherwise the system, of which art's 566 & 307 are but a part, would be far from even that relative perfection which is supposed to be within the reach of man, and that distinction impries the application of the rule laid down in art. 566.

Courts which possess the power to decide finally the merits of any controversy, unquestionably must also have the power to decide the many & sometimes vexatious questions which arise during the progress of a cause, & which constitute what is termed the incidents of each case. These decisions are known in legal parlance as interlocutory orders; but, though merely interlocutory, it is quite plain they may act upon subjects or decide points which operate a very serious injury, & detrimental to one or the other of the parties to the suit. In relation to such orders, generally speaking, the courts act without reference to
38 their prospective effects, the only point to be solved being whether the party asking is, under the law, entitled to them. For instance, a sequestration is obtained; the defendants offers & moves for the dissolution of the same upon grounds stated. In considering the question thus presented, the jurisdiction of the court to set aside or dissolve is admitted, & it is the legal duty of the judge, regardless of the consequences to the plaintiff, to set aside the sequestration if it is shewn to have been wrongfully obtained. This setting aside of the first order may operate an irreparable injury to the plaintiff, & still the court had the legal power to do so. In cases like this, it would be an act of injustice not to afford to the plaintiff an opportunity to revise a judgment or order which might be wrong; but the law evidently contemplates that interlocutory orders might be issued which should not be appealed from, for it specially provides for an appeal only in the case of those which may cause an irreparable injury. In case like this one, the question of the extent of the injury is not examined in the appellate for the purpose of determining the propriety of the order of the district court, but simply to solve the question as to the right to appeal. The injury may be deemed to be of an irreparable kind, & thus the appeal be maintained; & yet the order from which the appeal was taken may subsequently be approved & affirmed. It seems to me that art. 566, C. P., must be restricted to order of this nature.

But under art. 307, C. P.: "Whenever the act prohibited by the injunction is not such as may work an irreparable injury to the plaintiff, the court may, in its discretion, dissolve the same, provided," &c., &c. The order dissolving the injunction under the authority of this art. is but an interlocutory one, and it is claimed that, as it may work the irreparable injury mentioned in art. 566, it may be suspended by an appeal; but the ground of a just & correct distinction is evident from the
39 question of the power of the same court in the two causes. As I have already explained, generally speaking, courts do not consider the extent of the injury which interlocutory orders cause. In the matter of dissolving an injunction, upon giving bond, the true nature of the injury to be inflicted is the only question for determination, as it necessary to solve the point of power or jurisdiction. If it is not shown to the judge that dissolving the injunction will not cause irreparable injury, he has no power or jurisdiction to set it aside upon giving bond. He must pass definitely upon the extent of the injury, & he must have come to the conclusion, it is not of an irreparable kind, in order to set aside the order ot injunction. And when he has done so—when he has

determined that the act can cause no irreparable damage—he is required by the argument of the pl'ffs to stultify himself by issuing another order, this last being predicated upon a state of things just the reverse of what he had determined in the first, viz, that setting aside the injunction will work an irreparable injury. I cannot bring my mind to the conclusion that the law ever intended that a judge should have to issue two orders so inconsistent one with the other.

Besides this argument, which is amply vindicated by the dignified attributes and functions of a court of justice in our system of government, there exists another, which to me is entitled to great weight.

It as been the uniform rule of courts of justice to interpret laws in that manner which will give effect and force to all their parts; and it is a consequence of this that that interpretation has been considered inadmissible which imparts vitality to one section by giving death to another.

It certainly must be conceeded that the law-giver meant to confer some practical benefit by art. 307. Now, if the setting aside of the
40 injunction allowed by that art. is to be arested by a suspensive appeal, pending which the enjoined party suffers all the evils of the injunction, & which appeal may not be decided before the merits of the case, what relief does the art. 307 afford?

The very thing which it was the theory of the law to do is frustrated by assimilating orders issued by virtue of this art. to interlocutory orders in general, with a view to subject the first to the operation of art. 566. If this were true, the law itself would be guilty of the absurdity which is attempted to be imposed upon the judge, & deciding the same question in two entirely different ways, and yet be right in both.

I have been referred to but two cases in which the supreme court revised the action of a district court in dissolving an injunction under art. 307. The first is that of La Croix vs. Villeré, (XI A. R., 39.) This case is not entitled to any weight, because it appears the point of jurisdiction was admitted. It was pleaded that a suspensive appeal did not lie; but the case was argued by the defendant on the merits of the order of the judge of the court below dissolving the injunction. The second case is that of White vs. Cazenave, reported in 14 A. R., 59. In that case the defendant moved to dismiss the appeal, & the question was fairly presented. The court, through Chief Justice Merrick, decided the matter was appealable; and, in order that a correct opinion may be formed of the value of this decision, I quote the very words used by Judge Merrick, as the organ of the court:

"The question, then, must be determined by the facts and circumstances of each case; and, in order to test the plaintiff's right to the present appeal, we are forced to consider whether the court erred in granting the order. If it did err, an appeal lies by the very terms of art. 566 and 307. If it did not err, the appeal must be dismissed."

I have always entertained a most profound respect for the decisions of our supreme court, & in many instances have yielded my
41 own opinions in order to conform myself to theirs. But it is respectfully submitted that there is a point when submission is neither required nor desirable. Having been educated to believe that the appellate jurisdiction of the supreme court depended upon the nature and extent of a controversy, I cannot subscribe to the doctrine announced by the learned chief justice in this case, viz, that the appellate jurisdiction of the supreme court depended upon the fact whether the judgment of the district court was correct or not. If the judgment

of the lower court is correct, "then," says the chief justice, "the supreme court is without jurisdiction, & the appeal must be dismissed." Even if we adopt this system of determining the appellate jurisdiction of the supreme court, it seems to me that if that court has jurisdiction to reverse the judgment of the court below when it is erroneous, it should also have jurisdiction to affirm the judgment when it is correct. Where the learned chief justice found any law making this distinction in the appellate powers of the tribunal over which he presided, he does not inform us, and my best researches have not enabled me to find any. A decision supported by such bad logic is not entitled to much weight, even if it were the only one on the subject. But when others are found conflicting with it, no matter what may be its virtue in respect to date, it cannot be regarded as entitled to any weight at all. See cases of Jure vs. First Municipality, (2 A. R., 321;) Cobb & als. vs. Parham & al., (4 A. R., 147;) Charles Stetson vs. First Municipality, (12 R. R., 488;) Wells vs. City of New Orleans, (20 A. R., 300.) The motion for an appeal is therefore refused.

Notice of trial of exception.

42 BUTCHERS' BEN'T ASS'N
vs.
CRESC'T CITY L. S. L. & S. H. Co. } No. 466.

STATE OF LOUISIANA,
Sixth Dist. Court of New Orleans:

To Messrs. ROSELIUS & PHILIPS.

SIRS: Please to take notice that the exceptions in the above-entitled cause are fixed for trial on the 17th day of June, 1869, at 10 o'clock a. m.
[SEAL.] (Signed) S. C. DAVIS, *D'y Clerk.*

Sheriff's return.

Received June 15th, 1869, and on the 16th of same month and year served copy of the within notice on the firm of Roselius & Philips, att'ys, by personal service on Alf. Philips, esqr.
Ret'd same day.
(Signed) H. F. LYND, *D'y Sh'ff.*

Notice of trial of exception.

State of Louisiana, sixth dist. court of N. Orleans.

BUTCHERS' BEN'T ASS'N
vs.
CRES'T CITY L. S. L. & S. H. Co. } No. 466.

To Messrs. W. H. & RANDELL HUNT.

SIRS: Please to take notice that the exceptions in the above-entitled cause are fixed for trial on the 17th day of June, 1869, at 10 o'clock, a. m.
[SEAL.] (Signed) S. C. DAVIS, *D'y Clerk.*

Sheriff's return.

Rec'd June 15th, 1869, and on the 16th day of same month &

43 year served copy of the within notice personally on Randell Hunt, att'y.
Ret'd same day.
(Signed) A. F. LYND, *D'y Sh'ff.*

Rule.—Filed 14th June, 1869.

6th district court.

BUTCHERS' BEN'T ASS'N
vs.
CRES'T CITY L. S. L. & S. H. Co. } No. 476.

On motion of Campbell, Spofford & Campbell, of Cotton & Levy, & of Fellows & Mills, of counsel for the plaintiffs—
It is ordered that the defendants show cause, on Thursday, the 17th inst., at 10 a. m., why the order herein issued dissolving the injunction in this case, on defendants giving bond & security, should not be vocated & said injunction reinstated on the ground following, to wit:
1st. That said bond is defective in form, and not such as the law requires.
2nd. That the security therein is not such as required by article 3011 of the civil code.
3d. That the amount of the bond is not sufficient to protect the interest & rights of the plaintiffs, but should have been for a much larger amount than that named in the order.

Rule.—Filed 16th June, 1869.

BUTCHERS' BENEVOLENT ASSOCIATION OF N. O.
vs.
THE CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE CO. } No. 466.

STATE OF LOUISIANA,
Sixth District Court for the Parish of Orleans:

WEDNESDAY, *the 16th day of June.*—Present, the Honorable W'm H. Cooley, Judge.
44 On motion of Campbell, Spofford, & Campbell, Cotton & Levy, & Fellows & Mills, of counsel for plaintiffs, The Butchers' Benevolent Association of New Orleans—
It is ordered that defendant, The Crescent City Live Stock Landing & Slaughter House Company show cause, on Thursday, the 17th June, at 10 o'clock a. m., why the order to have the injunction issued in this case set aside by defendant furnishing bond be annulled on the grounds:
1st. That the bond fixed by said defendant is not conditioned according to express provision of law; &
2nd. That the sureties on said bond do not possess the essential requisites required by article 3011 of the civil code.
Extract from the minutes.
[SEAL.] (Signed) W'M WOELPER, *Clerk.*

Sheriff's return.

Received June 16th, 1869, and on the same day, month, and year

served copy of the within rule on The Crescent City Live Stock Landing & Slaughter House Co., through its president, F. J. Pratt.
Ret'd same day.
(Signed) WILLIAM J. GRADY, *D'y Sheriff.*

Notice of trial of rule.

BUTCHERS' BENEVOLENT ASS'N
vs.
C. C. L. S. L. & S. H. Co. } No. 466.

STATE OF LOUISIANA,
Sixth District Court of New Orleans:

To W'M H. HUNT, Esqr.

SIR: Please to take notice that the rule in the above-entitled case is fixed for trial on the 19th day of June, 1869, at 10 o'clock a. m.
[SEAL.] (Signed) W'M WOELPER, *Clerk.*

Duplicate June 19th, 1869.

45 *Sheriff's return.*

Received June 17th, 1869, and on the 18th day of same month & year, at 9½ a. m., served copy of the within notice, personally on W'm H. Hunt, att'y.
Ret. same day.
(Signed) W. D. WALSH, *D'y Sheriff.*

Testimony.

Sixth district court for the parish of Orleans.

IMBAU, AYCOCK & Co.
vs.
THE CRESCENT CITY LIVE STOCK LANDING & Slaughter House Co. } No. 471.

BUTCHERS' BENEVOLENT ASS'N
vs.
SAME. } No. 466.

Testimony on rule, taken June 19th, 1869, in open court.

CHARLES T. HOWARD sworn & examined for the pl'ffs in rule:

Q. You are one of the sureties on this bond?
A. Yes, sir.
Q. You signed that? (Bond handed to him.)
A. That is my signature, certainly.
Q. You signed that bond as surety for $20,000?
A. Yes, sir.
Q. Inform the court if you are worth that amount after all your other liabilities have been settled.
A. Yes, sir; and a great deal more.
Q. Where do you reside?
A. In New Orleans.

Cross-examined:

Q. What is your business?

A. I am manager of the Louisiana lottery.

Q. How long have you lived here?

46 A. Twenty years—from boyhood up—except during the war I was absent.

Q. In what does your property consist?

A. Real estate & money.

Q. Where is your real estate situated?

A. I New Orleans and State of Miss.

Q. Where is the real estate in New Orleans located? Name the property.

A. On St. Charles street, running through from Carrondelet.

Q. How many lots have you got there?

A. I really don't know, seven or eight, or ten or twelve; I could not tell you.

Q. What improvements are on that property?

A. Nothing more than old shanties.

Q. When did you acquire that property?

A. Last March or April.

Q. What did you give for it?

A. I suppose, for the whole, $56,000 or $60,000; I have not got a memorandum, but it is pretty near that.

Q. Did you give $50,000 or $60,000 for it?

A. Yes, sir.

Q. Did you buy it all at one time?

A. No; at different times.

Q. From how many did you acquire that property?

A. Four.

Q. Can you tell now how much you gave for that property?

(Witness makes a mental calculation and answers:)

A. $47,000 to $50,000; it may be a thousand or two out of the way.

Q. How much do you owe on that property?

A. I suppose about nineteen thousand; part of it half, and part of it one-third.

Q. Of the settlement?

47 A. Of the whole thing, balance & note.

Q. $19,000 or $20,000?

A. Yes, sir.

Q. Does that draw interest—the notes?

A. Yes, sir; all the notes are legal.

Q. Drawing five or eight per cent?

A. I don't know. I did not look at them. I signed them without looking at them.

Q. What other real estate have you got in New Orleans?

A. I have no other in N. O. I have some in Miss.

Q. What sort of real estate have you in Miss.?

A. A residence in Biloxi. The one used to belong to Mr. Collens.

Q. How much do you owe on that?

A. Four thousand dollars.

Q. Have you any other real estate?

A. None whatever. I got a small house at the lake worth one thousand dollars, and one lot in the country.

Q. You have got a house at the lake worth $1,000?

A. Yes, sir.

Q. What other property have you?

A. None.
Q. That sums up how much?
A. You are now enquiring after real estate. I have no more of real estate; that is all.
Q. What personal property have you now?
A. Do you mean over the bond?
Q. I wish to know what personal property you have.
A. I suppose I have some $50,000 in cash.
Q. Let us know what personal property you have altogether.
A. I have told you I have about $50,000 cash. I have five or six boats, & carriages, & lots of things.
Q. Where is that cash?
48 A. In two banks.
Q. When did you have your books balanced?
A. I don't know.
Q. You say you have got $20,000 cash in two banks?
A. Yes, sir.
Q. Where? In this city?
A. Yes, sir.
Q. How long have you had that money in bank?
A. Some months. I had a great deal more than that, but lost some lately.
Q. How long have you had that money in the bank?
A. Four or five months or six months.
Q. To whom does that money belong?
A. Most of it belongs to me. What I am telling you is mine. I am speaking of mine; I have that much myself.
Q. You have that much to your own credit?
A. Yes, sir.
Q. Had it there for six months?
A. Yes, sir.
Q. Do you use that money?
A. No; I might want it every day.
Q. Not loaned it out at interest?
A. No; that don't pay.
Q. What is the object of keeping so large an amount in bank?
[A.] If people might win in the capital prize of 30,000.
Q. Do you keep the bank account in your own name?
A. Yes, sir; and shall do it while I live.
Q. Now, is that all the property you have?
A. Oh, yes, sir; all I remember.
Q. You manage this Louisiana State lottery?
49 A. Yes, sir.
Q. Do you remember the obligations you under to the State & to the United States?
A. I am not under any.
Q. In the management of that lottery?
A. I am not under any.
Q. You are under none?
A. None.
Q. Have you given any bonds?
A. Not in my name.
Q. In whose name have you given these bonds?
A. A great many different gentlemen. This the La. lottery business you are asking me about now?
Q. Are you not under bond to the government of the U. S. for security?

A. Not as security; no, sir.
Q. As principal, are you not?
A. I don't know anything about that; the securities are two other men.
Q. What is the amount of that bond to the government?
A. That bond is a thousand dollars.
Q. What amount of bond have you signed to the gov'n't?
A. I cannot tell.
Q. You cannot tell the number of bond you are under to the gov't as principal?
A. No.
Q. How many bonds are you under to the city of New Orleans?
A. One.
Q. What is the amount of that bond?
A. The law makes that forty thousand dollars, but I am not on that bond as security; as security I am on no bond.
Q. Are you on it as principal?
50 A. I don't know what I am on it for. The auditor can give that information.
Q. For how much are you on the bond to the State of La. as principal?
A. I don't know.
Q. What particular number of appeal bonds are you on, either as principal or as security, from the district court to the supreme court?
A. What is an appeal bond?
Q. A bond on appeal from the judgment of a court.
A. I don't know I am on any. I don't think I am.
Q. Have you no appeal to the supreme court?
A. Not that I know of.
Q. Have you not suit pending?
A. Not that I know.
Q. Have you given no appeal bond either as principal or security?
A. Not that I am aware of.
Q. Have you endorsed any one's paper?
A. No.
Q. Have you any notes outstanding?
A. I have got a few.
Q. How many?
A. I don't know.
Q. To what amount?
A. I cannot tell. I have not my books in court with me.
Q. Are you surety on any administrator's bond?
A. No.
Q. On any curator's bond?
A. No.
Q. On no tutor's bond?
A. I believe not.
Q. Try and recollect.
51 A. I signed a bond in the 7th district court for $500 four months ago in favor of Col. W. Nixon. I did not ask what it was for, it was such a small amount. It is the only bond I am on of any kind whatever.
Q. Are you tutor or administrator for any one?
A. No.
Q. Did you sign any attachment bond?
A. No.

Q. Any injunction bond?
A. Do you mean bonds to get out injunctions on other people?
Q. Yes.
A. No, sir; not one.
Q. Have you taken out any suits against other parties, injunction suits, in which your obligation has been given in favor of the parties defendant?
A. I have taken out an injunction, but I don't exactly understand your language, and don't know how to answer that. You were alluding to that suit and know as much about it as I do. The case you refer to is the case I had against Johnson.
Q. I wish to know what number of obligations you are under in that litigation.
A. I believe I was under none. I did not know I was.
Q. Did you take out the injunction?
A. Yes, sir.
Q. Did you give a bond?
A. Yes, sir; but I was not on it. I gave security.
Q. Did you not sign the bond as principal?
A. I don't know whether I did or not. A paper was brought to me, which I signed. Mr. Hornor gave it to me. He can inform you.
Q. How many of these suits have you had against Mr. Johnson—the Havana lottery?
52 A. Only that suit; that's all.
Q. Do you recollect the amount of the bond?
A. $3,500 in one. They were very small; the highest $3,000 and the lowest one $500. It did not amount to anything.
Q. How many of these bonds did you sign?
A. I think there were three, but I cannot say. I will not say "yes" & I will not say "no." I think so.

JONAS PICKLES sworn and examined for the pl'ff in rule:

Q. Did you sign this bond? Your signature appears there for $20,000.
A. That is my signature.
Q. State whether, after the payment of all your debts, you are worth that amount.
A. Yes, sir.
Q. Your property consists in what?
A. Real estate in this parish, and Texas, Miss., & Ark.

Cross-examined:

Q. Where is your property located?
A. I have got seven tenements on Carondelet Walk, between Broad and White streets, second district.
Q. How much are they worth?
A. About $16,000—$14,166.
Q. What are they assessed at?
A. I don't exactly know what they are assessed at.
Q. Can you tell what particular amount this property is assessed at?
A. I don't know; but I refused $16,500 for them last year.
Q. I ask you to state, if you can, an approximate of the assessment on that property.
A. I think $8,000 or $10,000.
Q. What have you insured it at?
A. Not at all. I don't owe anything on it.

53 Q. Howe much money do you owe on it?
A. Not a dollar. That is all free.
Q. What is your other property?
A. I have a house on Canal street, just built.
Q. What is that worth?
A. $12,500.
Q. What is that assessed at?
A. It is not assessed at all, except the vacant lot. It is just built—a new house.
Q. What are you paying for the building of it?
A. It is already built. I am living in it, but it was not assessed last year.
Q. It is worth $12,000. Do you owe anything on that?
A. I owe $5,000 on it.
Q. What other property have you?
A. I have got four stores on New Levee street—Nos. 30 & 32, and Nos. 58 & 60. I refused for them, No. 30 & 32, $66,000, *for them.* They are worth now about $55,000.
Q. What are they assessed at?
A. $30,000.
Q. What do you owe on that property?
A. $16,000.
Q. Have you any other property?
A. Yes, sir; Nos. 58 & 60 New Levee street.
Q. What is that property worth?
A. From $25,000 to $30,000. I refused $35,000 for it last year.
Q. What do you owe on that?
A. $11,000.
Q. Have you any other property in New Orleans?
A. Yes, sir.
Q. Name it.
54 A. I own No. 50 Tchoupetoulas st.
Q. What is that worth?
A. $35,000 to $40,000. It is assessed at $30,000.
Q. What do you owe on that?
A. $11,350.
Q. Do you own any more?
A. No. 34 Thcoupitoulas st. It is worth from $25,000 to $27,000.
Q. What do you owe on that?
A. $10,000. I own no other real estate in N. O.
Q. Have you any personal property in New Orleans?
A. Yes, sir; I have got two good horses, and buggy, & furniture, & a watch. I would say I have got a heap of little things scattered about; would take me until to-morrow morning to tell you all the traps I have.
Q. What is the value of the entire personal property you have got?
A. $40,000. I have some pictures—oil paintings. In fact, I would not take that to-day.
Q. What amount of notes, obligations, have you due, stocks, &c.?
A. If you go a long way back, I have got a portfolio full of notes—over 100 due me; notes due since 1855 up to 1860, unpaid.
Q. These are all prescribed?
A. That is what I think.
Q. What stocks have you got—any kind?
A. R. R. stock, insurance scrip, you mean? Well, I have not got any.
Q. Have you got any other kind of stock?
A. I have got some Crescent City Slaughter House stock.

Q. Is that the preferred stock you have got?
A. Both. I have both.
Q. To what amount? What amount of this preferred stock have you got?
A. I think I have got $20,000. I don't know exactly how much I have got.
Q. And the other stock; that which is not preferred?
55 A. $27,000; two hundred and seventy shares. I suppose you call that $27,000.
Q. Of this stock which has not been paid for?
A. Ten per cent. has been paid on it.
Q. How many shares of the preferred stock have you?
A. I think I have 225.
Q. Is that your property, the preferred stock?
A. It is my property; I paid for it; I did not borrow the money either.
Q. That is all the property you have got?
A. I think that is all I have got.
Q. Now, let us know the obligations you are owing.
A. I have told you all the obligations I have.
Q. Do you owe any other obligations?
A. Yes, sir.
Q. Did you sign one for $3,000, & one for $1,730?
A. I have non for more than $150 or $200. That is all. I don't think I owe anything else. These are all I recollect I owe.

WM DURBRIDGE sworn and examined for the pl'ff in rule:

Q. You signed the bond as one of the sureties. Is that your handwriting, signature for $20,000?
A. Yes, sir.
Q. Are you worth that after all your other liabilities have been paid?
A. Yes, sir.
Q. Do you reside in New Orleans?
A. Yes, sir.

Cross-examined:

Q. Where do you live?
A. On Poydras street, No. 186.
Q. How long have you lived here?
A. Since 1846.
56 Q. What is your business?
A. A hatter.
Q. Where is your place of business now?
A. No. 188 Poydras street.
Q. You have answered you are worth $20,000 above your liabilities?
A. I have.
Q. Tell us what your property consist of.
A. Real estate, steamboat stock in trade, money.
Q. Where is your real estate located?
A. In the parish of St. Bernard.
Q. What does it consist of?
A. A plantation.
Q. Where is it located?
A. At Chalmette.
Q. Chalmette Plantation, is that correct?
A. Yes, sir.

Q. What is that worth?
A. $20,000.
Q. Are you working it?
A. I am working it on shares.
Q. Are you still owner of that plantation?
A. Yes, sir.
Q. When did you buy it?
A. About four years ago.
Q. What did you give for it?
A. $8,500.
Q. What is it now assessed at?
A. I don't know.
Q. What taxes do you pay on it?
A. I paid about $200 last year.
57 Q. What number of acres have you there?
A. I have 460 feet front by about 80 arpents deep.
Q. What amount do you owe on that property?
A. Nothing.
Q. Not a dollar?
A. Not a dollar.
Q. You paid the purchase-money for it?
A. Yes, sir.
Q. And you cannot tell me what it is assessed at?
A. I don't know.
Q. What other property have you?
A. I have a steamboat, the Lulu D.
Q. Where is she?
A. Lying down there now.
Q. What sort of a boat is that?
A. A stern-wheel steamboat.
Q. What is that boat worth?
A. $20,000.
Q. What am't do you owe on that boat?
A. Not a dollar.
Q. Is that boat in your name?
A. Yes, sir.
Q. You have paid for her?
A. Yes, sir. There may be a few bills, $50 or $100, or two hundred, due.
Q. What else have you got?
A. My stock in trade.
Q. What is that worth?
A. $10,000.
Q. Any other property?
A. I own some slaughter-house stock.
58 Q. How much of that?
A. Probably a thousand shares or 1,500.
Q. Is it of the preferred stock, or stock not paid for?

Q. How much of the preferred stock do you hold?
A. A thousand shares.
Q. And 500 of that which has not been paid?
A. Yes, sir.
Q. Are you one of the original incorporators?
A. No.
Q. You paid for this preferred stock?

A. Yes, sir.
Q. When did you pay for it, & what did you give for it?
(Objected to.)
Q. What is that stock worth?
A. The market quotation is 45, preferred stock.
Q. Do you know of any sales at that?
A. Only what I read in the papers & from friends.
Q. Do you know of one single sale having been made at that price?
A. I only know by what I see in the newspaper.
A. Do you know of one single sale having been made at that price?
A. Yes, sir.
Q. Was it a real sale?
A. Yes, sir.
Q. When was that?
A. Last week. I know it in this way: I met Mr. Pickles, & he told me he had just sold preferred stock at that price.
Q. That is all the property you have got, is it?
A. I have some interest in the North; but that is all I have in the city of New Orleans.
Q. Now tell us what your liabilities are.
59 A. I may possibly owe $1,000 in my hat business; that is the full extent. In the steamboat business I may owe $200 or $300. I have loaned my brother-in-law my note at 60 days for $500; that is all my indebtedness that I am aware of.
Q. Are you a married man?
A. I am not.
Q. Are you an administrator for any one?
A. No.
Q. Tutor?
A. I suppose I am of my children.
Q. You have been married?
A. Yes, sir.
Q. How long is it since your wife died?
A. She died two years ago.
Q. Did she die after you purchased the property?
A. Yes, sir.
Q. After you owned this hat store?
A. Yes, sir.
Q. After you owned the boat?
A. I built the boat since.
Q. What were you worth at the date of the death of your wife?
A. I possibly may have been worth $20,000 then—$20,000 or $25,000.
Q. How many children have you?
A. Four children.
Q. They are minors, are they not?
A. Yes, sir.
Q. Have you qualified as tutor?
A. No.
Q. Not taken the oath as tutor?
A. No.
60 Q. Has that estate been settled up—your wife's estate?
A. No; I have never taken any legal steps in the matter; not necessary to do so.
Q. What was the value of the entire estate, including monies, notes, crops, &c., of yours, at the date of your wife? I mean also your hat store, and every species of property you had.

A. I have just told you, from $20,000 to $25,000.
Q. And were you owing anything at that time?
A. Yes, sir; I owed considerable at that time.
Q. You paid it all up since then?
A. Yes, sir.
Q. How long have you been living in New Orleans?
A. Since 1846.
Q. Where do you claim your domicile?
A. I claim it in the parish of St. Bernard.
Q. That is your domicil?
A. I claim that, though I live mostly in this city.
Q. But that is your domicil?
[A.] I claimed it some time ago, intending to reside there; but I found it unhealthy, & since then live here.
Q. Have you not plead "no jurisdiction" in a suit brought against you in this parish, alleging you are a resident of St. Bernard?
A. Some time since I did.
Q. Do you recollect in what case? In what court was it?
A. I forget now.
Q. You did set up you are a resident of the parish of St. Bernard?
A. Yes, sir.
Q. And it still your residence?
A. I have not changed it since.

Re-direct:

Q. Do you reside in this parish or in the parish of St. Bernard?
61 [A.] I reside here now. I intended making my residence there, but it did not agree with my family. It was sickly, and I then came back.
Q. How long have you returned to the city of New Orleans?
A. I go down there occasionally in fine weather. I am there two days in the week. I go down Saturday & come back on Monday.
Q. Your residence at present is in this parish?
A. Yes, sir.
Q. Have you increased your fortune since the death of your wife?
A. One way or the other, $25,000 or $30,000?
Q. Then you are worth now twice as much as you were worth when your wife died?
A. More than that.
Q. Did you enumerate among your assets your stock in trade?
A. Yes, sir.
Q. Are you acquainted with Mr. E. D. Benton?
A. I know him; yes, sir.
Q. Do you know his signature?
A. I do.
Q. Examine this bond and state if you recognize the signature there as his.
A. It is his signature. I see him sign it.
Q. Do you know where he is at this time?
A. I was told he was suddenly called off on business in New York.
Q. Do you know what Benton is worth?
A. He told me some time ago.
(Objected to.)
Q. Do you know it?
A. Only what he told me.

Q. Do you know of his being possessed of any particular kind of property?

A. I don't, to my own knowledge.

Re-cross:

Q. That increase of $25,000 or $30,000 on your property, since
62 the death of your wife, is in part the increase in the rise in the value of your plantation, is it not?

A. No; outside of that.

Q. Has not your plantation increased in value since you purchased it?

A. Well, it has, because I have laid out money on buildings, new agricultural implements, & fences. Thas is the reason why.

Q. You said your property had increased in value from $25,000 to $30,000 since the death of your wife. Tell us how it increased, in what respect it has increased *in what respect it has increased*, from that day to this.

A. I have made money by my steamboat; my business—a good business—and I make money by that very rapidly.

Q. Have you any other stock in trade except that you have given?

A. This is my reference to my legitimate business—my hat business. I have made money by my steamboat.

Q. What was the amount of the stock in trade you had at the time of the date of the death of your wife?

A. I could not say.

Q. Can you approximate?

A. I was about to take some legal steps about the estate, and had reason to figure up what it was worth at that time; and it was $20,000 to $25,000.

Q. About what amount of stock in trade had you at that time in the hat store?

A. It must have been somewhere near seven, or eight, or nine thousand dollars.

Q. You just answered the stock of trade at this time is about that?

A. Ten thousand dollars.

Q. Therefore, the stock in trade has not increased. Let us know what it increased; in the purchase of the steamboat, was it not?

A. I made money. I have been running a steamboat since 18 months.

63 Q. What is the steamboat worth?

A. Twenty thousand dollars.

Q. Is that increase of your property?

A. I say to day I am $25,000 or $30,000 better off than I was when my wife died.

Q. How much did you pay for this steamboat?

A. I build her.

Q. How much did you pay for building her?

(Objected to.)

Q. How much did she cost you?

(Objected to.)

Q. Did you ever offer to sell that boat?

A. Yes, sir; she is in the market now, & has been since I owned her.

Q. What is the age of the boat?

A. Seventeen months.

Q. Where is she running to?

A. To Red River.

Q. Did you pay cash for the building of that boat?

A. Yes, sir; every dollar.

Q. How can you now account for this fact, that at the death of your wife you were worth $25,000, and in five months after the death of your wife you built a boat worth $20,000?

A. I borrowed the money to build this boat.

Q. Have you paid that money?

A. I have.

Q. Now, touching the question of your domicile, is there a suit in the justice court in this city to which you pleaded no jurisdiction; Mr. Renshaw, attorney, against you?

A. I don't know what the defence was.

Q. Have you not pleaded to the jurisdiction of the court; you
64 were a resident of the parish of St. Bernard?

A. I don't know what the defence was. My att'y came to me, and I told him the captain denied that bill, & he must make some defence to put it up until I came at the facts.

Q. Did you not instruct him to put in you were a resident of the parish of St. Bernard?

A. I instruct him to put in some defense until I found whether it was a just claim or not.

Q. Have you not made an answer in the fifth court in answer to a suit, or some other legal proceedings, that you had a residence in the parish of St. Bernard?

A. Not to my knowledge; some time ago, eighteen months or two years ago, there was probably an answer of that description.

Q. Is that suit still pending?

A. I presume it is.

Q. How long ago has it been since you filed the answer?

A. My att'y came to me——

Q. I ask you how long is it since you filed the answer?

A. It cannot be more than ten days.

Q. Who is your att'y?

A. Bartlette in that case.

Q. Now, don't you know the plea set up there is, you are native of the parish of St. Bernard?

A. I don't know, of my own knowledge.

Q. Did your att'y state to you he would enter a plea of that kind, and that would put up the case?

A. I told him find some defence, so that I could find time to see if the claim was just or not.

Q. But did not your att'y tell you he would put in that plea?

A. He did not, that I remember.

65 Q. Has that case been tried?

A. I don't think it has; it his a small amount.

Q. Did you, see the answer put in?

A. I did not.

Q. Did you learn since this answer was put in by him?

A. I have not learned anything about it since I gave him the notice.

Q. Have you been to see your att'y since the answer was filed?

A. Not on that subject.

Q. I ask you, have you seen your att'y?

A. I have seen him to-day.

Q. Did he then tell you the answer had been filed?

A. He told me about another case I had in this court.

Q. Did he tell you an answer was filed in that case?

A. Never mentioned that case at all.

Q. Have you not given out you are a resident of St. Bernard?
A. No; I have not.
Q. Have you not stated to citizens you are a resident of St. Bernard?
A. I never mentioned it; never thought of it.
Q. Did not you deny the other day to the deputy sheriff your own name when he went to serve a writ on you?
(Question objected to.)
Q. Do you recollect the deputy sheriff, this gentleman here, calling at your store to serve a writ on you, or a subpœna?
A. I don't recollect.
Q. Did you see this gentlemen (the deputy sheriff) at your store?
A. I cannot recognize him.
Q. Do you recollect any gentleman coming there and serving a paper on you?
A. I don't remember any one.
Q. Have you no recollection of your telling an officer that Mr. Durbridge was living in the parish of St. Bernard, and not to be found in this parish?
66 A. I cannot remember telling any one that.
Q. Did you get that paper served on you left at your store?
A. I recollect very well having a paper of that description, a subpœna.
Q. Was it served upon yourself?
A. I don't remember whether it was served on me or not, but I recollect having a paper of that description.
Q. In what case was that?
A. The case of Rous; I was summoned as a witness.
Q. You have no recollection of the officer serving it on you?
A. No.
Q. On whom did he serve the paper?
A. I don't know.
Q. Have you any clerks?
A. Yes, sir.
Q. Do you recollect who he left the paper with?
A. I do not.
Q. Have you ever signed any administrator's bond, or gone security for any parties on appeal bond?
A. I have.
Q. How many bonds did you sign?
A. I signed one I know of.
Q. What amount is that?
A. Two or three thousand dollars.
Q. Has that case been decided?
A. Decided; the man got his money & I have been discharged.
Q. What other bonds did you sign?
A. I don't know of any.
Q. Are you administrator in any estate?
A. No.

Re-direct:

67 Q. What was the amount of your liabilities at the death of your wife?
A. I must have owned, when my wife died, some seven or eight thousand dollars.

Cross-ex'n resumed:

Q. I understand you to say you were on no other obligations?

A. You ask me when my wife died two years ago.
Q. Are you on other obligations this time?
A. I have loaned my brother-in-law my note for $600.
Q. Are you not a contractor for the opening of Red River?
A. I am interested in it.
Q. Are you not on that bond?
A. There is no bond.
Q. No bond to the governor?
A. No.

Re-direct:

My interest in that contract is one-third. I have advanced the money for carrying it on. My interest in that is fully worth $20,000.

Cross-ex'm'n resumed:

Q. Have you fulfilled that contract?
A. We have to the letter, as far as we have done; three sections out of four. We have yet one section to do, which we are to do this season, within sixty days. One installment has to be completed; three are due.
Q. What is your interest in the instalments that have been completed?
A. My interest in the capital, share advanced for the purpose, and one-third of the profits.
Q. What amount of money have you advanced?
A. I am out about $16,000. I did not borrow that money. It was my own money.
Q. What are the profits in the three installments?
A. I cannot tell. Three all complete out of four sections.
Q. What are the profits in the three sections?
68 A. I cannot tell until the thing is wound up. The 4¾ sections might be a loss. A heavy wind, or if the river rose, would sweep our rafts away.
Q. Is that your signature?
A. Yes, sir; that is my signature. (Paper filed in the 5th dist. court Feb'y 7th, 1868, is the one witness testifies to.)
Q. Have you made any other declaration since you made that?
A. I have not.

By the court:

Q. Where have you been living in fact?
A. In fact, at 188 Poydras street.
Q. With your family?
A. Yes; they are going to the public school. At that time I intended to make that my home.
Q. It turned out disagreeable to you, and you gave up the idea?
A. Yes, sir.
Q. Did you make any declaration of that character in the parish of St. Bernard?
A. I believe I did since that time.

Cross ex'm'n resumed:

Q. Do you answer that question; have ever filed a counter-declaration in the parish of St. Bernard?
A. No; I have not.
Q. This att'y of yours filed that exception?

A. Yes, sir.

Q. In what court was that answer made in that suit?

A. In some justice of the *justices of the* peace's court. I think it was Shelley's.

Q. Give us the title of the suit?

A. The parties claiming were Welsh & Bonsa, of Shreveport.

69 R. J. PACKWOOD, sworn & examined for the pl'ff in rule, says:

I reside in the parish of St. Bernard.

Q. Are you willing to sign this bond as one of the sureties for $20,000 in the place of Mr. Benton?

A. Yes, sir.

Q. Are you worth $20,000, after all your other liabilities have been satisfied?

A. Yes, sir.

Cross examined:

Witness says: I reside in the parish of St. Bernard; that is my domicile.

Q. Where is your property?

A. The majority of it is in New York City.

Q. Where is your property in the State of Louisiana situated?

A. I have a small plantation, a thousand acres, in *in* the parish of St. Landry. I estimate the value of that property at ten thousand dollars.

Q. What is it assessed at?

A. It has not been assessed this year. Last year, I think, it was assessed at five thousand dollars. My agent there attended to that; I paid little attention to it.

Q. Are you working that place?

A. Not this year.

Q. Was it any improv'ent on it?

A. Yes, sir; & is not subject to overflow.

Q. Have you any other property in Louisiana?

A. Not in my own name. I have some property, stock in trade, at 95 & 97 Camp street.

Q. That is the store of Hening & Co.

A. Yes, sir.

Q. What amount have you there?

Q. About $40,000.

70 Q. The whole stock?

A. My share, my interest in that affair.

Q. What do you owe on the store in your business?

A. I expect we have $4 of assets to $1 of indebtedness. That is all the property I have got in this city in my own name. I don't owe anything except a note coming due the 28th of this month for $500. I am on no bonds to my knowledge except this one that I am about to become on. I am not administrator. I am a married man. My wife has no claim against me whatever.

(Objection made to witness signing the bond on the ground that he is a resident of St. Bernard.)

JONAS PICKLES, recalled, says:

I signed this bond for twenty thousand dollars, & am willing to sign it for twenty thousand dollars more.

I am worth $40,000 after all my liabilities are paid.

Cross-examined:

Q. I am compelled to go over your property again. I wish you to state how much you are owing now.

Answer. $47,000 or $48,000 altogether.

Q. Take up now the first amount.

A. The Carondelet Walk property; I don't owe anything on that except taxes. The Canal street property; I owe $5,000; the interest is paid up to the 15th of next March. On the houses on New Levee street, Nos. 30 & 32, I owe $16,000; the interest on that, I think, is paid to Dec'r or January next. This property is worth $55,000; it is assessed at $30,000; it is rented at $4,000 some odd dollars; I have been getting $8,000 for it; i had been paying me that for three years, and I gave those who had paid me that rent the preference when I leased it
71 last year, although I could get more for it, as they had been paying me a large rent.

Q. What is the cash valuation of that property in the market to-day?

A. I don't know; I never sold property for cash, but always on time.

Q. Place a cash estimate on it to-day.

A. If I was going to buy it I would be willing to pay $40,000 cash; but if I was offered $50,000 cash to-day I would not take it. The lots adjoining were sold, without the buildings, for $50,000.

Q. What is that property worth in the market, cash, to-day?

A. I think it would fetch $40,000; I think so, but it is not for sale.

Q. You owe on that how much?

[A.] $16,000. The next is Nos. 58 & 60 New Levee street.

Q. What is that worth, cash, in the market?

A. $25,000 to $30,000. The mortgage on the two stores is, I think, $10,350, not drawing interest at all. The interest is paid up. One note is due the 23d of this month. The house 34 Tchoupitoulas street is worth $25,000, cash, in the market.

Q. What is the obligation on it?

A. Ten thousand dollars, without interest. The next is No. 50 Tchoupitoulas street.

Q. What is that worth, cash, in the market?

A. $35,000; I owe eleven thousand and some odd dollars on that.

Q. The Carondelet Walk property is worth how much, cash?

A. I don't know what it is worth, cash, or what it would sell for; I would not take less than $12,000 cash for it.

Q. What is it worth in the market?

A. It is worth to some people $16,000; it is worth to somebody else $12,000; and to somebody else it is not worth anything. It depends on the purchasers.

Q. What is a reasonable estimate for that property, in cash?

72 A. Seven tenements, $12,000.

Q. The Canal-street property is worth, cash, what?

A. I think it is worth $11,000, cash.

Q. What other property or real estate have you?

A. I have got Texas land.

Q. I am speaking of New Orleans real estate.

A. None; that is all.

Re-direct:

Q. What is the value of your property in Miss.?

A. $10,000, cash.

Q. In Arkansas?

A. $3,000.
Q. In Texas?
A. I don't know what it is worth; but it cost me a good deal.
Q. All this property is landed estate?
A. Yes, sir.

Re-cross:

Q. Does all that property belong to you?
A. To me.
Q. In your own right?
A. In my own right, and recorded in my own name.
Q. When did you acquire that property?
A. Ever since I was a little boy, fifteen years old; I have been acquiring all the time, and losing once in a while.
Q. Has your wife any interest in that property?
A. She is my partner; that is, my only partner.
Q. Did she bring anything in her marriage?
A. Not a dollar.
Q. Did you not fail before?
A. I never failed in my life.
73 Q. You took the benefit of the respite law?
A. Yes, sir.
Q. Are you on no other bond but this?
A. I am on no other bond except what I am on for The Slaughter House Company.
Q. How many bonds are you on for The Slaughter House Co.?
A. On this and on twenty others, at $300 each.
Q. Where are they?
A. I don't know.
Q. In what court are the bonds?
A. In the 5th court.
Q. What sort of bonds, these injunction bonds?
A. Yes, sir; I think they are.
Q. Are you on any administrator's bond?
A. No; I am on no tutor's bond or on any appeal bond?
Q. Are you on any bonds in the United States court?
A. Yes, sir; I believe I am on a bond for a steamboat, $3,000.
Q. Are you on any bond for Mr. Howard?
A. No.
Q. On no bond for these lotteries?
A. Never had anything to do with lotteries at all.
Q. Are you on any other obligations?
A. None except the note I told you of.
Q. What is the amount of that note?
A. $3,000; a private note; nothing more except what I have told you before.
To the court: I am on that bond in the United States court as security, & not as principal.

Mr. FEISTER sworn and examined for ———:

74 Q. Do you know Mr. Durbridge?
A. I know him now, sir.
Q. Did you go to his store to serve a paper on him?
A. Yes, sir.
Q. State what answer he gave you when you went there?
A. I went into the store and the clerk pointed Mr. Durbridge out to

me, (this gentleman here, pointing out Mr. Durbridge.) I walked up to him, and he said he was not in; that he was in the parish of St. Bernard. First he said Mr. Durbridge was back in the yard. I went back to the gentleman in the yard. He said, "No; Mr Durbridge is not in; he is in the parish of St. Bernard." So I came back again and said, "I will leave this paper here." He said, "No; not leave it here; he is not in the city nohow." I asked the clerk again, "Did you not tell me Mr. Durbridge is here?" He said, "Yes; there he is himself." So I walked up to him again and he told me he was not in, but he was in the parish of St. Bernard, but he would keep the paper, that he may be in. He kept the paper.

Q. This is the man (Mr. Durbridge) who told you this?

A. That is the man.

By the court:

Q. Did you tell him beforehand what kind of a paper it was?

A. It was a subpœna as a witness.

Cross-examined:

Q. How did the knowledge of all these facts come to the knowledge of Judge Cotton?

A. I told him.

Q. Did you not mention it to him just now?

A. A little time ago. I mentioned it before.

Note of evidence on rule.—Filed 19th June, 1869.

75 BUTCHERS' BEN'T ASS'N *vs.* CRESCENT CITY L. S. LANDING & SLAUGHTER HOUSE CO. } No. 466.

6TH DISTRICT COURT:

Note of evidence on trial of rule:

Plaintiffs offer in evidence the declaration of domicil of W'm Durbridge, No. 19068, docket of the 5th district court, & the order of the court thereon, to be filed.

"*Declaration of domicil of W'm Durbridge, of record in 5th district court under the No. 19068, offered in evidence by pl'ffs.*

"To the honorable judge of the fifth district court of New Orleans:

"The undersigned respectfully shews that formerly, for a number of years, he resided in the city of New Orleans, but that in the year 1864 he purchased a plantation in the parish of St. Bernard, to which he removed his family with the intention of establishing his domicil there, and has continued in that intention, although he has continued to carry on his mercantile business in this city.

"He now desires, in pursuance of the law, to place this his declaration on record in your honorable court as a public declaration of his aforesaid change of domicil to the parish of St. Bernard, and that said parish may be taken and considered to be his legal and political domicil.

(Signed) "W'M DURBRIDGE.

"*Extract from the minutes.—February 17th*, 1868.

"WM DURBRIGE
"Change of domicil. } No. 19068.

"This day came and appeared T. H. Bartlette, esqr., & produced to the court the declaration of change of domicile by William Durbridge to the parish of St. Bernard.

"The court therefore ordered that said declaration be filed and
76 made a part of the record of this court."

Rule dismissed.—Extract from the minutes of June 14th, 1869.

Present, the Hon. W. H. Cooley, judge.

BUTCHERS' BEN'T ASS'N
vs.
THE CRESCENT CITY L. S. L'D'G & SLAUGHTER HOUSE CO. } No. 466.

In the matter of the rule taken in this case by the pl'ff on def'ts to show cause why a suspensive appeal from the judgment rendered on the 5th June, 1869, on the rule taken by the def't to set aside the injunction herein granted, should not be allowed, the court, for the reasons assigned in the written opinion this day delivered & filed, ordered that said rule be dismissed, and the appeal refused.

Rule dismissed.—Extract from the minutes, June 19th, 1869.

BUTCHERS' BEN. ASSOC'N
vs.
CRESCENT CITY L. S. L. & S. H. COMPANY. } No. 466.

The rule taken in this matter by the plaintiff on the defendant to test the sureties on the appeal came on; Campbell, Spofford & Campbell, Cotton & Levy, & Fellowes & Mills, for plaintiffs; Roselius & Philips, & Hornor & Benedict, for defendant.

C. Roselius, on behalf of defendants, moved that they be allowed to substitute R. T. Packwood as surety on the appeal bond for twenty thousand dollars in lieu of E. B. Benton, who had left this city; and also to substitute Jonas Pickles as surety on said bond for the further sum of twenty thousand dollars, in the place of John L. Lockwood, who objects to qualify himself as such surety; which motion was granted by the court, and the two substitutes signed the bond in open court for the respective amounts above named.

77 After hearing testimony and argument of counsel, the court, for the reasons orally assigned, considering the securities on the appeal bond to be good & solvent—

It is ordered that said rule be dismissed.

Exception continued.—Extract from the minutes June 19th, 1869.

BUTCHERS' BEN. ASSOC.
vs.
CRESCENT CITY L. S. L. & S. H. CO. } 466.

The exception in this matter fixed for this day was by consent of counsel ordered to be continued to Monday 21st June, 1869, at 10 a. m.

Exceptions continued.—21st June, 1869, extract from the minutes.

BUTCHERS' BEN'T ASSOC.
vs.
CRESC'T CITY L. S. L. & SLAUGHTER HOUSE CO. } No. 466.

The exception filed in this case came on this day for trial; Campbell, Spofford & Campbell, Cotton & Levy, Fellows & Mills, & Cooley & Philips, for plaintiff; William H. & Randell Hunt, & Roselius Philips, for defendants.

After hearing pleadings and argument of cause, ordered that said exceptions be continued till to-morrow, at 11 o'clock a. m., for further argument, for want of time.

Exceptions continued.—Extract from the minutes, June 22nd, 1869.

The exceptions in this case came on again for hearing; Campbell, Spofford & Campbell, Cotton & Levy, & Fellows & Mills, for plaintiff; W. H. & Randell Hunt, and Roselius & Philips, for defendant.

After hearing further argument, ordered that said exception be continued to to-morrow, at 11 a. m., for further argument.

78 *Exceptions continued.—Extract from the minutes, June 23d, 1869.*

The exception in this matter came on again this day.

The counsel engaged in the case being present, the argument was proceeded with, when, the hour of adjournment having arrived—

It is ordered that the further hearing of the exception be continued till to-morrow, at 11 o'clock a. m.

Rule.

State of Louisiana, sixth district court for the parish of Orleans.

WEDNESDAY, *the 23d day of June*, 1869.—Present, the Honorable W'm H. Cooley, judge.

THE BUTCHERS' BENEVOLENT ASSOCIATION
vs.
CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE COMPANY. } No. 466.

On motion of Campbell, Spofford & Campbell, Fellows & Mills, and Cotton & Levy, attorneys for the plaintiffs—

It is ordered that the defendants do show cause, on the 30th day of June, 1869, why a rehearing should not be granted on the rule taken and decided on the 19th day of June, 1869, to test the solvency of the bond given by defendants to set aside the injunction issued in this case, on the following grounds, to wit:

First. The court erred in allowing other sureties to be placed on the bond in lieu of those first given.

Second. The court should have rejected the bond, as Durbridge showed that he was not entitled to credit, and not worth the sum of twenty thousand dollars; and that he was a non-resident of this parish, and therefore not such security as required by law.

Third. That Packwood is not such a security as required by law.

Fourth. That your relators have learned, since the trial of the rule, that Durbridge swore false in making an estimate of the value of his property; that his entire property, after paying his debts, will not amount to twenty thousand dollars.

[SEAL.] (Signed) WM WOELPER, *Clerk.*

79 *Return on rule.—Filed 28th June*, 1869.

Received June 24th, '69, and on the same day served copy of the within rule on The Crescent City Slaughter House Co., through F. J. Pratt, president of said co.

Ret. same day.

(Signed) W. J. GRADY, *D'y Sheriff.*

Exceptions continued.—Extract from the minutes, June 24th, 1869.

BUTCHERS' BEN. ASSO.
vs.
CRES'T CITY L. S. L. & S. H. Co. } No. 466.

The exceptions in this case came on again this day for argument.

Counsel engaged in this case being present, the argument was resumed, and the hour for adjournment having arrived—

It is ordered that the further hearing be continued till to-morrow at 11½ o'clock a. m.

Exceptions continued.—Extract from the minutes, June 25th, 1869.

The exceptions in this matter continued to this day were called, and, by consent—

Ordered to be further continued to Monday, 28th inst., at 11 o'clock, Randell Hunt, esq., of counsel for defendants, being indisposed and unable to appear in court.

Exceptions continued.—Extract from the minutes, June 28th, 1869.

BUTCHERS' BEN. ASSO.
vs.
CRES'T CITY L. S. L. & S. H. Co. } No. 466.

The exceptions in this case, continued to this day for argument, were, by consent—

Ordered to be further continued till Saturday, 3rd July, 1869, at 11 a. m., Randell Hunt, esq., of counsel for defendants, being ill and absent from court.

Rule absolute.—Extract from the minutes, June 30th, 1869.

BUTCHERS' BENEV. ASSO.
vs.
CRES'T CITY L. S. L. & S. H. Co. } No. 466.

80 The rule taken in this case by plaintiffs on the defendants, to shew cause why a rehearing should not be granted on the rule to test the solvency of the sureties, came on this day; Campbell, Spofford & Campbell, Cotton & Levy, & Fellows & Mills, for plaintiffs in rule; C. Roselius & W. H. Hunt, for defendants in rule.

After hearing argument of counsel, the court, considering the law to be in favor of plaintiffs in rule—

It is ordered that said rule be made absolute so far as to test the solvency of Durbridge, one of the sureties in the bond; and that the rule be fixed for hearing for that purpose for Monday, 5th July, 1869, at 10 a. m.

Exceptions continued.—Extract from the minutes, July 3d, 1869.

BUTCHERS' BEN'T ASSOC.
vs.
CRESCENT CITY L. S. L. & S. H. CO. } No. 466.

The exceptions in this matter came again this day for further argument; Cotton & Levy, Spofford, Campbell & Spofford, & Fellows & Mills, for plaintiff; W. H. & Randell Hunt and Roselius & Phillips, for defendants.

After hearing counsel—

Ordered that the exceptions be continued to Tuesday, 6th July, 1869, at 11 a. m., for further argument, for want of time.

Rule continued.—Extract from the minutes, 5th July, 1869.

BUTCHERS' BEN'T ASSOC.
vs.
CRESC'T CITY L. S. L. & S. H. CO. } No. 466.

The rule in this matter to test the surety of Durbridge, surety on bond, fixed for this day, was ordered to be continued to Wednesday, 7th July, 1869, at 10 a. m., witnesses being absent.

Ordered further *ordered* that attachments issue for said absent witnesses, returnable at the above-mentioned day and hour.

81 *Exceptions continued.—Extract from the minutes, July 6th, 1869.*

BUTCHERS' BEN. ASSO.
vs.
CRES'T CITY L. S. L. & S. H. CO. } No. 466.

The exceptions in this matter continued to this day for argument were ordered to be further continued to Thursday 8th inst., at 9 o'clock a. m., Randell Hunt, esq., of counsel for defendants, being ill and absent from court.

Rule continued.—Extract from the minutes, July 7th, 1869.

BUTCHERS' BEN. ASSOC.
vs.
CRES'T CITY L. S. L & S. H. CO. } No. 466.

The rule taken in this matter to test the solvency of Durbridge, surety, &c., fixed for this day, was ordered to be continued to Friday, 9th July, 1869, at 10 a. m., witnesses being absent; and ordered further that attachments issue for said witnesses, returnable at that time.

Exceptions continued.—Extract from the minutes, July 8th, 1869.

BUTCHERS' BEN. ASSO.
vs.
CRES'T CITY L. S. L. & S. H. CO. } No. 466.

The exceptions in this matter came on again this day for argument. Present, the counsel engaged in the case. After further hearing, the exception was ordered to be continued till to-morrow at 10 a. m.

Rule continued.—Extract from the minutes, July 9th, 1869.

BUTCHERS' BEN. ASSO.
vs.
CRES'T CITY L. S. L. & S. H. COMPANY. } No. 466.

The rule in this matter to test the solvency of William Dur-
82 bridge, surety, &c., fixed for this day, was by consent ordered to be continued indefinitely, witnesses being absent from the city.

Exceptions submitted.—Extract from the minutes, July 9th 1869.

BUTCHERS' BEN. ASSO.
vs.
CRESC'T CITY L. S. L. & S. H. COMPANY. } No. 466.

The exceptions in this case continued to this day came on again. Present, the counsel engaged in the case.

The argument of counsel being concluded, the exceptions were submitted, and taken under advisement by the court.

Exception and motion to quash.—Extract from the minutes, November 1st, 1869.

BUTCHERS' BEN. ASSO., &C.,
vs.
CRES'T CITY L. S. L. & SLAUGHTER HOUSE CO. } No. 466.

On motion of J. P. Hornor, of counsel for the defendants, it is ordered that said defendants have leave to discontinue the exceptions and the motion to quash the injunction filed by them in this case, reserving to them the right to answer to the merits.

Order to amend.—Extract from the minutes, November 2d, 1869.

BUTCHERS' BEN'T ASSO., &C.,
vs.
CRES'T CITY L. S. LANDING & SLAUGHTER HOUSE CO. } No. 466.

J. B. Cotton and Cooley & Philips, esqs., of counsel for plaintiffs, moved that the order made of record yesterday, on the motion of counsel for defendants that the exceptions and motion to quash the injunction herein filed by def'ts be discontinued, be cancelled and avoided. J. P. Hornor, esq., counsel for def'ts, present.

After hearing argument, the court, for the reasons orally as-
83 signed, ordered that the motion be so far allowed as to amend the order of yesterday so as to order that defendants have leave to

waive their exceptions & motion to quash the injunction filed by said defendants, with leave to said defendants to answer to the merits.

Answer.—Filed Nov. 39th, 1869.

THE BUTCHERS' BENEVOLENT ASSOCIATION of New Orleans
vs.
THE CRESCENT CITY LIVE STOCK LANDING & Slaughter House Comp'y. } No. 466.

SIXTH DISTRICT COURT:

Now come the defendants, and reiterate their exceptions heretofore filed to the petition herein, and for answer to pl'ffs' petition plead a general denial of all the allegations therein contained, and specially deny the existence and legality of the plaintiffs' association herein.

And for further answer respondents aver that said petition sets forth no legal cause of action against said defendants.

And for further answer respondents aver that the allegations of said petition are impertinent, scandalous, and criminous; that it contains general, loose, and railing accusations against these defendants, without certainty, specification, or detail, charging that they did corruptly, fraudulently, and unlawfully procure the enactment of the statute, by which they became incorporated, by the use of bribes and other seductive and criminal means with & among the members of the legislature; that it charges the def'ts with being a band of adventurers in the sense of being disreputable persons who live by chance, who are without property and without stake in the community; that it charges that the stockholders embrace the governor of the State and a number of members of the general assembly who participated in the passage of the act of incorporation in flagrant violation of their public duty, and with flagitious violations of the constitutions of the State and of the Union, and to afford help to certain indigent and beggarly officials in the State government; that the whole tenor of said petition is to scandalize and defame these defendants and the legislative and executive departments of the government, and to bring them and the law into odium
84 and contempt; that it alleges matters which it is unbecoming the dignity of the court to hear, and charges persons with crimes and misdemeanors and misconduct and corruption not only not necessary to be shown in the cause, but which could not lawfully be shewn, even if they were true, as these defendants specially aver them not to be.

Wherefore defendants say that said petition ought not to be entertained, and they pray to be hence dismissed, with costs, and for final judgment in their favor, and for all general and equitable relief.

(Signed) JOSEPH P. HORNOR &
WILLIAM H. HUNT, *Att'ys.*

(Signed) C. ROSELIUS & RANDELL HUNT, *of Counsel.*

Admission.—Filed 9th December, 1869.

THE BUTCHERS' BEN. ASS.
vs.
THE CRESCENT CITY LIVE STOCK LANDING & Slaughter House Co. } No. 466.

SIXTH DISTRICT COURT:

It is admitted that the plaintiffs have been engaged in their present

occupation, as set forth in their petition, for the last thirty years; that at least one thousand persons are thus engaged in connection with their employment; that the property owned and possessed by the butchers and stock-dealers near the stock-landing, in the upper part of New Orleans & the lower part of Jefferson, next the river, is worth many thousands of dollars, & would be materially diminished in value should said act No. 118 of 1869 be enforced & carried into effect.

N. O., 9 Dec'r, 1869.

(Signed) JOSEPH P. HORNOR, *for Def't.*
(Signed) FELLOWS & MILLS, *Att'ys.*

Note of evidence.—Filed 9th December, 1869.

BUTCHERS' BENEVOLENT ASS.
vs.
C. C. L. S. L. & S. H. Co. } No. 466.

85 SIXTH DISTRICT COURT:

Pl'ff offers the admission now filed.
" " " charter of pl'ff, copied in No. of the 5th district court.
" " " testimony taken out of the court in No. 1883 of 7th dist. court, subject to exceptions by def't.
Def't " the rebutting testimony taken in No. 1883 of 7th dist. court.

Case submitted.—Extract from the minutes, December 9th, 1869.

BUTCHERS' BEN'T ASSO.
vs.
CRESCENT CITY L. S. L. & SLAUGHTER HOUSE Co. } No. 466.

This case was, by consent of counsel, submitted to the court for determination upon the admission filed and evidence adduced.

Reasons.

BUTCHERS' BENEVOLENT ASS'ON
vs.
THE CRESCENT CITY LIVE STOCK LANDING and Slaughter House Company. } No. 466.

Filed 13th December, 1869.

SIXTH DISTRICT COURT, *Parish of Orleans:*

The plaintiffs sue to restrain the defendants from asserting, setting up, maintaining, or endeavoring to maintain, any exclusive rights or privileges within certain parishes, under an act passed by the legislature of 1869, and entitled "An act to protect the health of the city of New Orleans, to locate the stock-landings and slaughter-houses, & to incorporate The Crescent City Live Stock Landing and Slaughter House Company."

It is urged by the plaintiffs that this act of the legislature is unconstitutional, because it creates a monopoly in favor of the parties named therein, and that the legislature of the State has no power to do this,

as it deprives them of the natural right which they possess of pursuing their trade of butchering for a livehood.

Subsequent to the oral argument of the case, on the motion of
86 defendants to dissolve the injunction, the plaintiffs urged, as a further reason to maintain the injunction obtained by them, that the act of the legislature above mentioned, which gave the exclusive privileges claimed by the defendants, was not a law of the State, inasmuch as it was signed by the governor after the adjournment of the legislature which enacted it, & more than sixty days from the date of the commencement of the session of the legislature. It, therefore, becomes necessary to ascertain whether the act invoked by the defendants has become a law; for, that question being resolved in the negative, it would be untimely now to discuss the constitutional objections which have been so ably argued on both sides. The session of the legislature which met in the month of January last expired by constitutional limitation on the 4th of March succeeding, and the act incorporating the defendants was signed by the executive on the 8th of the same month. The point made is, that with the adjournment of the legislature the power of the governor to sign acts ceased to exist; and as the act had not become a law previous to the adjournment without his signature, by the expiration of the five days mentioned in the constitution, the same must remain merely in the form of a projet or inchoate act until the first day of the next session of the legislature, when it will become a law if not then disapproved by the executive. The first argument urged by the plaintiffs to sustain the point made is drawn from article 66 of the constitution, which reads as follows:

"Art. 66. Every bill which shall have passed both houses shall be presented to the governor. If he approve, he shall sign it; if he do not, he shall return it, with his objections, to the house in which it originated, which shall enter the objections at large upon its journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of all the members present in that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of the members present in that house, it shall be a law. But, in such cases, the vote of both houses shall be determined by yeas and nays, and the names of members voting for or against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by
87 the governor within five days after it shall have been presented to him, it shall be a law in like manner as if he had signed, unless the general assembly, by adjournment, prevents its return, in which case the said bill shall be returned on the first day of the meeting of the general assembly after the expiration of said five days, or be a law."

The constitution requires than, an act to become binding as a law should be passed by the house of representatives, by the senate, and approved by the governor; and, in the event of his disapproval, that the act be again submitted to the consideration & vote of the house & senate, & if each of these by a two-thirds vote agree to pass the act, it shall become a law notwithstanding the executive disapprobation.

It is therefore apparent, from a mere inspection of the constitution, that the approval of the governor is absolutely essential, except in the case when a two-thirds vote can be obtained. A bill may become a law without the signature of the governor & without a two-thirds vote, viz, by the expiration of the five days, without its being returned to the house in which originated. This mode, which at the first reading would seem to indicate another method besides the two above men-

tioned, is, really speaking, not entitled to rank as a distinctive mode. It is evident that the theory of our system of government admits of but two well-defined systems: one with the executive approbation, the other without this, but by a two-thirds votes. The approval of the governor is really that which completes the requirements of the constitution in the case when an act becomes a law by the expiration of the constitutional five days, only in that event there is no evidence of his approval than that which results from his silence. By signing he gives evidence of his approbation; by not objecting in the time granted to him so to do, he is presumed to approve. But when must the governor exercise the power thus given to him? It is quite evident, from the text of article 66 of our present constitution, that, unless the legislature be in session, the governor cannot disaprove an act, nor can an act become a law by the presumptive evidence of his approval afforded by his silence during the five days mentioned. When the session is
88 over, he cannot disapprove, because the manner in which his disapproval shall be made known by him is indicated in article 66, and the method prescribed presupposes the legislature in session: "He shall return it, with his objections, to the house in which it originated." The bill cannot become a law, after the adjournment, by the silence of the governor, because our art. 66 expressly declares that it shall not. Can it become a law after the adjournment by the signature of the governor?

Article 66, above quoted, evidently contemplates that the legislature is in session, because by requiring the session in almost positive terms for the negative of the governor, the manner of his approval, which is prescribed in the same phrase, & in a member thereof immediately preceeding that in relation to his disapproval, also necessarily presupposes the legislature in session. The words, "unless the general assembly by adjournment prevents its return," must control the time of approval by signature, as well as the time of disapproval, because it has been the custom in this State since the first constitution for the governor to "return" a bill to one of the two houses as well when he signs as when he does not. In the first case, he informs the legislature that he has approved their action; in the second, he explains the reasons which compel him to disagree with them. But, to make the matter still plainer, art. 66, after the words, "unless the general assembly by adjournment prevent its return," proceeds as follows: "in which case the said bill shall be returned on the first day of the meeting of the general assembly after the expiration of said five days, or be a law." Thus it is positively declared that, in the event of an adjournment within the five days, the bill shall become a law on the first day of the next meeting of the legislature, unless returned by him on that day with his objections. Why does art. 66 say that the law shall then become a law? If it was contemplated that the governor should have power to sign bills during the recess of the legislature, after the words which end art. 66, viz, "or be a law," the following would have been added, viz, "unless sooner approved by the governor."

But independent of the meaning of art. 66, which the above dissection of its different parts clearly points out, would it not be considered singular in a system laying claim to sense and some scientific adjustment of its details, that the executive should be given the power to
89 make a law by his signature during the recess, but not to possess the power of disapproval? If the governor can sign a bill, & thus make it law during the recess, it is because he can act; if he can act, why is it that the presumption of acquiescence, which applies when the legis-

lature is in session and he has allowed five days to expire without objecting, is not also made to apply to his silence five days after the adjournment? There is no sound reason why one should exist without the other; & the only logical deduction from the positive exclusion of the one is that it was never contemplated the governor possessed any but executive powers during the recess of the legislature In the case of The People vs. Bower, 21 New York Rep., 517, decided in 1860, under the New York constitution of Nov. 3rd, 1846, the power of the governor to sign after adjournment was maintained. As a sample of the reasoning which supports such a conclusion, I quote the following: "No part of it (the constitution) expressly or impliedly prohibits the governor from signing bills after the adjournment of the senate and assembly." I have been taught that the legislatures of the several States possessed sovereign powers, that they could legislate upon every subject except those positively prohibited either by the State constitution or that of the United States; and, therefore, the rule has always been to recognize their power unless it could be shown that there was a prohibition; but the New York court is the first, &, let me add, the only one, that has applied the doctrine to the governor of a State. It would seem from the above quotation that the governor of New York has the power to do everything that is not prohibited. Fortunately for us, the power of our executive is measured by another rule, a little more republican perhaps, but none the less safer for the liberties of the people. The question of the power of the governor to sign bills after adjournment arose in California, in the case of Fowler vs. Pierce, 2 Cal. Rep., 172. The supreme court of that State, with a constitution precisely similar to that of New York, unanimously decided that the governor could not sign a bill after the adjournment of the legislature. It will be seen that the decision in New York above quoted was not concurred in by all the judges of the court of errors & appeals.

The constitution of Louisiana of 1864 was, in regard to the signing of bills by the governor, exactly the same as that of New York under which the Bowen decision was rendered; and a similar decision having been made by one of the courts of this city, affirming the same power in the executive under the constitution of 1864, because of its similarity to that of New York, & based on the reasoning of the New York case, the convention changed the language of the constitution of 1864, and added the clause which was in the constitution of 1812, 1845, & 1852, to the effect that bills not disapproved by the governor before adjournment should go over to the next meeting of the legislature, &, unless returned disapproved on the first day, should then become laws. The only change made in reinstating the article of 1812, 1845, & 1852 was in giving the executive only the first day of the next session to return a bill with his objections, whilst under the constitutions of "'12," "'45," and "'52" he had three days. It was thought that reinstating the article as it existed in three constitutions would do away with the power which it was supposed the governor possessed under that of 1864, because, until that period, no one ever believed the governor could sign a bill after the adjournment of the legislature. And the people of the State, having approved the present constitution with a cluse which had been interpreted by the practice of fifty-odd years, must be supposed to have intended to deny that which was thought deducible from the different language of the constitution of 1864.

90

But without the argument which the language of art. 66 so obviously furnishes, there is another provision of our constitution which excludes the power of the executive to sign bills during the recess. I

refer to article 39. Speaking of the duration of the legislative session, it says, "No session shall extend beyond the period of sixty days, to date from its commencement; and any legislative action had after the expiration of said period of sixty days shall be null and void." It was not intended that the nullity proclaimed by the second part of this phrase in Art. 39 should apply merely to "action" on the part of the two houses constituting the general assembly. The first part, have prohibited a session of either of these after the expiration of the sixty days, was sufficient to render null and void any "action" on their part after that time. The second part was necessary to prohibit legislative action in another quarter as well as the first prohibited it to the two houses.

The framers of the Constitution of the United States distributed
91 the powers of government in three departments, & they aimed to keep the three branches distinct and separate. In the constitutions of the different States composing the Union the same theory was adopted as being essential to a republican form of government. But, notwithstanding the evident desire of all, it is conceded that the feature in the Constitution of the U. S., and in that of the several States, which gives the executive a voice in the making of laws by approving or withholding his approval, was a departure from the logic of the distribution of powers sought to be maintained. Mr. Madison, in No. 47 of the Federalist, shows this very clearly. He says, "If we look into the constitutions of the several States, we find there is not a single instance in which the several departments of power have been kept absolutely separate & distinct. The governor of the State having a voice in the making of laws, his action in approving or disapproving of bills passed by the legislature has always been considered 'legislative action.'" Hence the necessity and application of the second part of the phrase copied from article 39, "and any legislative action had after," &c., &c. The court of errors & appeals of New York, in the decision already referred to, admits that the act of the governor in approving or disapproving bills is that of a legislator, & not of an executive. In the case of Fowler vs. Pierce, 2 Cal. Rep., 172, the court say, "The executive is by the constitution a component part of the law-making power. In approving a law, he is not supposed to act in the capacity of the executive magistrate of the State, whose duty it is to see that the laws are properly executed, but as a part of the legislative branch of the government. This power is a unit though distributed, and the parts can only act in unison. This legislative character of action by the executive head is not peculiar to our system of government. In England, power is divided into two branches: The one legislative, to wit, the Parliament, consisting of King, Lords, and Commons; the other, executive, consisting of the King alone. Thus every branch of civil polity supports and is supported, regulates & is regulated, by the rest; for two houses naturally drawing in two directions of opposite interest, and the prerogative in another, still different from them both, they mutually keep each other from exceeding their proper limits; while the whole is

prevented from seperation & artificially connected together by
92 the mixed nature of the Crown, which is a part of the legislative, & the sole executive magistrate," 1 Blackstone, chap. 2, pages 147 & 155. By the "Charte constitutionelle" of France of the 4th June, 1814, art. 15, it is provided that "La puissance legislative s'exerce collectivement par le roi, la chambre des pairs, et la chambres des députès des departements." See charter of the 7th & 14th August, 1830, art. 14.

The constitution of the Republic of France of the 4th January, 1852,

title 2, art. 5, also provides that "la puissance legislative s'exercise collectivement par le president de la republique, le sénat, et le corps legislatif."

Rogron, commenting on these articles, says, "Plusieurs conditions etaient nécessaires a la formation de la loi: 1st, la proposition par le roi, ou lime des deux chambres; 2, son adoption par la chambre des dèputés; 3, son adoption par la chambre des pairs; 4, enfin, sa sanction par le roi, qui l'adoptaite en définitive, et lui donnait l'existence. Aujourd'hui le pouvoir legislatif est exercé collectivement par l'empereur, le senat, et le corps legislatif."

The approval and signing of bills by the governor is not, therefore, executive, but, on the contrary, "legislative action," and, as such, is clearly included in the prohibition against "any legislative action" contained in article 39.

The history of the legislation of the general government and that of every State in the Union presents the best argument against the power of the executive to sign bills after the adjournment of the legislature. Until 1867 it had never been attempted, except twice, in New York & in California. In the first it was maintained by a divided court and under a constitution containing no provision analogous to art. 39 of ours. In the latter, even without this art., the supreme court denied the existence of the power. And so well had the interpretation of more than half a century settled the matter that, in Minnesota, by a special provision of the constitution, the power is given to the governor to approve & sign "within three days of the adjournment of the legislature, and any act passed during the last three days of the session." And in other States, with a view of giving full time to the different branches of the law-making power, the organic law prohibits the introduction of
93 any new bills within a specified number of days of the period of final adjournment. In Massachusetts the question was settled as early in 1791: "When a prorogation takes place, the session is ended, & a bill or resolve, after the session is ended, cannot acquire the force of law." See 3 Mass. Rep., page 567.

In our own State the interpretation of every legislature & every governor since 1812 has always denied this power to the governor. Never once was it exercised during that period until 1867, when the State was not in a healthy condition of government, & when usurpation was the rule, & obedience to law the exception. The several laws of the State in relation to the publishing of the laws passed by the general assembly conclusively prove that no one ever supposed the governor had the power to approve bills during the recess. See acts of 1813, sect. 3, page 118, also page 120; acts of 1836, page 9, sect. 4; acts of 1865, page 34, sect. 6; acts of 1868, page 9, sect. 6. The construction given to the corresponding ar'cle in the constitution of 1812 by the acts cited in 1813, 1836, & 1865, was ratified & approved by the conventions held in 1845, 1852, 1864, and 1868, by the insertion of a similar provision in the constitutions adopted during these years, with the full knowledge of the interpretation which had been given to the words by preceeding legislatures.

Those now living who have occupied seats in the legislature of this State under the several constitutions preceeding the present one will doubtless remember that it was the custom to stop all action in each house for several hours previous to the adjournment for the express purpose of giving the governor time to sign all the bills he thought proper; and, indeed, many of them will remember, also, that as the last hours of the session seemed to fly away, & it was deemed the executive would not

have sufficient time, the needles of the clocks in the legislative hall were turned backwards so as to produce the impression that the constitutional injunction was complied with. And shall it now be said that our constitutional traditions for the last fifty-seven years were all founded in error; that the progress of time has at last eliminated the truth,
94 which was hid under the darkness produced by years of incapacity?

But no one can suppose it was ever the intention of the framers of our organic law that the framing of our laws should depend so entirely upon the executive. With the power to approve bills during the recess he becomes a complete despot, besides reducing the people of the State to the degradation of seeing laws for their government appear upon the public surface like fresh supplies of goods in stores, and possibly upon the same principle of supply & demand. That the executive should possess the power of approving bills during the recess gives him an ample opportunity to benefit friends & punish foes, regardless of the correct considerations which actuated the past legislature in passing the bills. It is too dangerous a power to lodge in man, frail as human nature is known to be; and it would require the most positive language in our constitution to induce a reasonable being to suppose it was intended by the people that such a power should be exercised by their republican executive. The abuse of such a power was well shown by Dr. Franklin in the convention which framed the Constitution of the United States. He said "he had some experience of this check in the executive on the legislative under the proprietary government of Pennsylvania. The negative of the governor was constantly made use of to extort money. No good law whatever could be passed without a private bargain with him." See Madison Papers, vol. 2, page 784. The framers of our constitution doubtless profited by the experience of Dr. Franklin; and, acting upon the lesson it taught, so shapped the fabric of our State government as not to allow to one branch thereof the faculty of making laws in the dark, when its motives could not be instantly scrutinized, and, if improper, stigmatized by that legislative action which would render it abortive & useless. The theory of our organic law is that a certain period of the year shall be devoted to the making of laws; & by the making of laws must be understood everything which, under the constitution, is necessary to give an act the force of a law. After the
95 expiration of that period, legislation is null & void; & by legislation must be understood everything necessary to make an act law. The act of the legislature giving defendants exclusive privileges having been signed by the governor when he had no power to approve acts, and his approval having been given in violation of a prohibitory clause of the constitution, is simply an absolute nullity; and the act not being a law, the rights of the plaintiffs are unimpaired. The injunction issued in this case must therefore be perpetuated.

Judgment.

BUTCHERS' BEN. ASSO.
vs.
CRES'T CITY L. S. L. & SLAUGHTER HOUSE CO. } No. 466.

In this case, for the reasons assigned in the written opinion on file—
It is ordered and adjudged that there be judgment in favor of the plaintiffs, The Butchers' Benevolent Association, a corporation of this State, domiciled in New Orleans, & against the defendants, the "Cres-

cent City Live Stock Landing & Slaughter House Company;" that the writ of injunction issued in this case be made pepetual, and that said defendants, through their agents, attorneys, stockholders, employees, or other representatives, be, and they are hereby, forever restrained from setting up, maintaining, or endeavoring to maintain, any exclusive right, pretention, or privilege under the act No. 118, passed by the legislature of the State of Louisiana during the session of that body in the year 1869, entitled "An act to protect the health of the city of New Orleans, to locate the stock-landing & slaughter-houses, and to incorporate The Crescent City Live Stock & Slaughter House Company," within the parishes of Orleans & Jefferson; that all the existing arrangements of steamships, steamboats, & other crafts for landing of animals of any description, and all existing arrangements for carrying on the live-stock landing & slaughter-house business, and for the slaughtering,
96 dressing, sale, and disposition of butchers' meats, are hereby declared valid & operative, & not subject to prosecution, suit, or other procedure by the said defendants; be, and are hereby, enjoined from molesting or disturbing the plaintiffs or other persons from carrying on their trade as heretofore, and are ordered to desist from all threats, menaces, or declarations adverse to plaintiffs' rights to conduct their trade & business as heretofore.

It is further ordered that said defendants pay costs.

Judgment rendered 13th Dec., 1869.

Judgment signed 18th Dec., 1869.

(Signed) W. H. COOLEY, *Judge.*

Motion and order of appeal.—Filed 16th December, 1869.

BUTCHERS' BENEVOLENT ASS'N
vs.
CRESCENT CITY LIVE STOCK LANDING AND SLAUGHTER HOUSE COMPANY. } No. 466.

SIXTH DISTRICT COURT:

On motion of W. H. Hunt and Joseph B. Hornor, att'ys of def'ts, and on suggesting to the court that they are informed and believe that there is error to their pejudice in the final judgment of the court herein rendered against them, and that they are desirous of appealing suspensively therefrom—

It is ordered by the court that a suspensive appeal be granted herein to def'ts, returnable to the supreme court of Louisiana on the first Monday of January, 1870, upon their furnishing bond, with good and solvent security, in the sum of two hundred dollars, conditioned as the law directs.

Bond.—Filed 16th December, 1869.

Know all men by these presents that we, The Crescent City Live Stock Landing and Slaughter House Company and F. J. Pratt,
97 are held and firmly bound unto W'm Woelper, clerk of the sixth district court for the parish of Orleans, his executors, administrators, and assigns, in the sum of , heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated in the city of New Orleans, on this 16th day of December, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas the above-bounden C. C. L. S. L. & S. H. Com'y this day

filed a petition of appeal from a final judgment rendered against them in the suit of Butchers' Benevolent Ass'n vs. C. C. L. S. L. & S. H. Com'y, in the 6th district court of parish of Orleans, on the day of December, 1869:

Now, the condition of the above obligation is such, that the above-bound C. C. L. S. L. & S. H. Company shall prosecute their appeal and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise that the said F. J. Pratt, surety, shall be liable in their place.

(Signed) F. J. PRATT, *Presd.* [SEAL.]
(Signed) F. J. PRATT. [SEAL.]

Signed, sealed, and delivered in presence of—
(Signed) JOSEPH P. HORNOR.

Bill of exceptions.—Filed 17th December, 1869.

BUTCHERS' BENEVOLENT ASS'N
vs.
C. C. L. S. L. & S. H. Co. } No. 466.

6TH DISTRICT COURT, *Parish of Orleans:*

Be it remembered that on the trial of this case, in open court, on Thursday, the 9th day of Decem'r, 1869, the counsel for pl'ffs offered the evidence of Peter Gardner and others to prove that def'ts had not complied with the provisions of their act of incorporation, sec. 3,
98 to which the counsel of def'ts objected on the grounds following:

First. That such matters could not be set up against def'ts except by the State; that parties pl'ff herein had no right to call such fact in question.

Second. That it had been admitted by the State, in the pleadings in the case of The State, ex rel. S. Belden, Att'y Gen'l, & W'm Fagan et als., No. 809 of the docket of the fifth district court for the parish of Orleans, that def'ts had complied with the conditions of their charter, and that such admission is conclusive upon pl'ffs.

But the court overruled these objections and ordered the evidence to be received; when the counsel for def'ts excepted to the said ruling of the court, and tendered this bill of exceptions, praying the court to sign the same, and make it a part of the record in this case.

New Orleans, Nov. 17th, 1869.

(Signed) W. H. COOLEY, *Judge.*

Certificate.

STATE OF LOUISIANA,
Sixth District Court for the Parish of Orleans:

I, William Woelper, clerk of the sixth district court for the parish of Orleans, do hereby certify the foregoing two hundred and twenty-one pages do contain a true and complete transcript, with the exception of the charter of pl'ffs, in 5th district court for the parish of Orleans, and testimony taken in suit 1883, 7th district court, and rebutting testimony taken in same case, offered in evidence, as per note of evidence filed December 9th, 1869; and of all the documents filed, testimony and evidence adduced, and proceedings had on the trial of the cause

wherein The Butchers' Benevolent Association of New Orleans are plaintiffs and The Crescent City Live Stock Landing and Slaughter House Company are defendants, the same being numbered 466 on the docket of said court, and of the record thereof.

In testimony whereof I have hereunto set my hand and affixed the impress of the seal of said court, at the city of New Orleans, on this twentieth day of December, in the year of our Lord one thousand and eight hundred & sixty-nine, & in the ninety-fourth year of the independence of the United States of America.

[SEAL.] (Signed) W'M WOELPER, *Clerk.*

99 Supreme court of the State of Louisiana.

Agreement of counsel.—Filed January 3d, 1870.

Supreme court.

IMBAU, AYCOCK & CO. *vs.* C. C. L. S. L. & S. H. Co.	No. 2504.
BUTCHERS' BENEV. ASS'N *vs.* SAME.	" 2505.
L. S. D. &. BUT. ASS'N *vs.* SAME ET AL.	" 2506.
C. C. L. S. L. & S. H. Co. *vs.* ST'B'T B. L. HODGE NO. 2 & OWNERS.	" 2507.
STATE, EX REL. S. BELDEN, ATT'Y GEN'L, *vs.* W'M FAGAN ET ALS.	" 2508.
C. C. L. S. L. & S. H. Co. *vs.* BUTCHERS' BENEV. ASS'N.	" 2509.

It is agreed that the above six entitled and numbered suits are to be submitted to the court for adjudication upon the briefs filed and arguments made in the case of The State, ex rel. Simeon Belden, Att'y General, vs. W'm Fagan et als., No. 2508 of the docket of this court, and at the same time of the submission of said case.

N. O., 3 January, 1870.

(Signed) JOSEPH P. HORNOR,
Of Counsel for C. C. L. S. L. & S. H. Co.

" FELLOWS & MILLS,
Att'ys for Imbau, Aycock & Co. & others in above suits.

Case submitted.—Extract from the minutes.

FRIDAY, *January 28th*, 1870.—The court was duly opened. Present, their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, W. G. Wyly, William W. Howe, associate justices.

100 BUTCHERS' BENEVOLENT ASSSOCIATION of N. O.
vs.
THE CRESCENT CITY LIVE STOCK LANDING AND Slaughter House Co. } No. 2505.

On written consent thereto of counsel for both parties exhibited to the court, this case was taken under advisement by the court upon the briefs now on file for both parties.

Opinion.—Filed April 11th, 1870.

BUTCHERS' BENEVOLENT ASSOCIATION OF NEW Orleans
vs.
THE CRESCENT CITY LIVE STOCK LANDING & Slaughter House. } No. 2505.

Appeal from the sixth district court, parish of Orleans.

LUDELING, C. J., delivered the opinion of the court in the words and figures following, to wit:

For the reasons stated in the case of The State of Louisiana, ex relatione S. Belden, Atto'ney General, vs. W'm Fagan et als., it is ordered, adjudged, and decreed that the judgment of the district court be avoided & reversed, and that there be judgment against the plaintiffs, dissolving the injunction and dismissing their demand, with costs in both courts.

Decree.—Extract from the minutes.

101 MONDAY, *April 11th*, 1870.—The court was duly opened pursuant to adjournment. Present, their honors John F. Ludeling, chief justice; and James G. Taliaferro, W. G. Wyly, William H. Howe, associate justices. Absent, Rufus K. Howell, associate justice.

His honor the chief justice pronounced the judgment and decree of the court in the following case:

BUTCHERS' BENEVOLENT ASSOCIATION OF NEW Orleans
vs.
THE CRESCENT CITY LIVE STOCK LANDING AND Slaughter House Co. } No. 2505.

On appeal from the sixth district court for the parish of Orleans.

It is ordered, adjudged, and decreed that the judgment of the district court be avoided and reversed, and that there be judgment against the plaintiffs, dissolving the injunction and dismissing their demand, with costs in both courts.

Petition for rehearing.—Filed April 26th, 1870.

Supreme court.

THE BUTCHERS' BENEVOLENT ASSOCIATION of New Orleans
vs.
THE CRESCENT CITY LIVE STOCK LANDING AND Slaughter House Co. } No. 2505.

The petition of plaintiffs and appellees, with respect, show that they are informed there is error to their prejudice in the judgment and decree rendered herein by this court.

Wherefore, and for the reasons and upon the arguments filed in the suit No. 2508, entitled "The State of La., ex rel. Attorney General, vs. W'm Fagan et als.," they pray for a rehearing in this case; that the judgment heretofore rendered be set aside; and that the judgment of the district court be affirmed, with costs, and for general relief.

(Signed) FELLOWS & MILLS,
(Signed) CAMPBELL, SPOFFORD & CAMPBELL,
(Signed) COTTON & LEVY, *for Plaintiffs & Appellees.*

Rehearing refused.—Extract from the minutes.

MONDAY, *May 9th*, 1870.—The court was duly opened. Present, their honors John T. Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, William W. Howe, associate justices. Absent, W. G.
103 Wyly, associate justice.

His honor the chief justice pronounced the judgment and decree of the court in the following case:

BUTCHERS' BENEVOLENT ASSOCIATION OF NEW Orleans
vs.
THE CRESCENT CITY LIVE STOCK LANDING AND Slaughter House Co. } No. 2505.

It is ordered that the rehearing applied for in this case be refused.

Petition for writ of error.

THE UNITED STATES OF AMERICA,
State of Louisiana, Parish of Orleans:

To the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States:

The petition of the Benevolent Butchers' Association of New Orleans, an incorporation under the special corporation laws of Louisiana, through its president, Paul Esteben, plaintiff, in a cause wherein The Crescent City Live Stock Landing & Slaughter House Co. is defendant, plaintiff respectfully represents—

That he is aggrieved by a final judgment in the supreme court of the State of Louisiana, in above-named suit, bearing date the 9th day of May instant, and that petitioner exhibits to your honor a copy of the record of said cause, with the opinions & decree of the said su-
104 preme court therein annexed to this petition as Exhibit A.

That it appears on the face of the said record that your peti-

tioner claimed a right, privilege, & title under the Constitution of the United States, & especially under the fourteenth amendment thereof, for itself as a corporation, & for all the members thereof, individually and collectively, to labor in their vocation of butchers, and in the business of dealing in & landing of live stock & slaughter-house business on equal terms & conditions with other citizens of the United States, whereever & wheresoever said business was allowed under the laws of the State or the United States.

But that, against common right & the right of plaintiffs, these petitioners, the legislature of Louisiana did grant to seventeen persons, incorporated as The Crescent City Live Stock Landing & Slaughter House Company, the sole & exclusive privileges of conducting the live-stock landing & slaughter-house business within the limits & privileges of the said act, & did make it unlawful for any person or persons to land, keep, or slaughter cattle, horses, sheep, swine, or other animals, or to have any stock-landing, yards, pens, slaughter-house, or abattoirs at any point or place within the parishes of Orleans, Jefferson, or St. Bernard, or within the corporate limits of the city of New Orleans, other than those of the said corporation, & made it unlawful for any person or persons to conduct or to carry on said business, and did require that all places for carrying on said business should be no other than those of said company, & did require that all animals designed for sale & slaughter in said parishes should be landed at the wharves, & sheltered & kept at the houses & yards of said corporation, & fixed a
105 tariff of burdensome charges therefor contrary to common right and the Constitution of the United States as aforesaid.

And your petitioners avers that in the said cause was set up the said constitutional right, title, & privilege, but that said court overruled & determines adversely to the same, thereby establishing and maintaining an odious, oppressive, & michievous monopoly against common right & the law of the Constitution.

Wherefore they pray respectfully of your honor to allow a writ of error to the Supreme Court of the United States, to sign a citation to the defendant in said cause, and to approve the bond herewith submitted, and for such order as may further to justice & right in the premises appertain.

(Signed) FELLOWS & MILLS.
(Signed) COTTON & LEVY.

Writ of error allowed, May 13th, 1870.
(Signed) JOS. P. BRADLEY,
Asso. Justice Sup. Ct. U. S.

Filed May 16th, 1870.
(Signed) M. P. JULIAN,
D'y Clerk Sup. Court State of La.

Bond for writ of error.

Supreme court of Louisiana.

THE BUTCHERS' BENEVOLENT ASSOCIATION OF New Orleans
vs.
THE CRESCENT CITY LIVE STOCK LANDING & Slaughter House Co.
} No. 2505.

106 Know all men by these presents that we, The Butchers' Benev-

olent Association of New Orleans, as principal, and B. Beaubay & William Fagan, as sureties, are held and firmly bound unto The Crescent City Live Stock Landing & Slaughter House Co. in the full and just sum of ten thousand dollars, to be paid to the said Crescent City Live Stock Landing Co., its or their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy.

Whereas lately, at a session of the supreme court of the State of Louisiana, held on the 9th of May, 1870, in a suit depending in said supreme court, wherein The Butchers' Benevolent Association of New Orleans was plaintiff, and The Crescent City Live Stock Landing & Slaughter House Co. were defendants, judgment was rendered against the said Butchers' Benevolent Association of New Orleans; and the said Butchers' Benevolent Association of New Orleans having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation, directed to the said Crescent City Live Stock Landing & Slaughter House Company, citing and admonishing said company to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next·

Now, the condition of the above obligation is such, that if the
107 said Butchers' Benevolent Association of New Orleans shall prosecute its writ to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

[SEAL.]	(Signed)	PAUL ESTIBEN, *President.*	[L. S.]
	(Signed)	B. BEOUBAY.	[L. S.]
	(Signed)	WM FAGAN.	[L. S.]

Sealed and delivered in the presence of—
(Signed) J. Q. A. FELLOWS.

Approved May 13th, 1870.
(Signed) JOS. P. BRADLEY,
Asso. Justice Sup. Ct. U. S.

Filed May 16th, 1870.
(Signed) M. P. JULIAN,
Dep'y Clerk Sup. Court State of La.

107*a* THE UNITED STATES OF AMERICA, *State of Louisiana:*

The President of the United States to The Crescent City Live Stock Landing & Slaughter House Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein The Butchers' Benevolent Association of New Orleans is plaintiff in error, and you are defendants, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy.

JOS. P. BRADLEY,
Asso. Justice Sup. Ct. U. S.

(Indorsed:) Supreme court of Louisiana. No. 2505. The Butchers' Benevolent Association of New Orleans vs. The Crescent City Live Stock Landing & Slaughter House Co. Citation.

Marshal's return.

Received, May 18, 1870, by the U. S. marshal, and on the same day, month, and year served a copy of the within citation on the within-named Crescent City Live Stock Landing & Slaughter House Company, through F. J. Pratt, president thereof, by delivering the same to him, said Pratt, in person, at his office, corner of Common & Carondelet streets, in this city.

New Orleans, May 18th, 1870.

S. W. REED,
D'y U. S. Marshal.

Supreme court.

Filed June 1st, 1870.

M. P. JULIAN, *Dep'y Clerk.*

Citation.

Supreme court of Louisiana.

THE BUTCHERS' BENEVOLENT ASSOCIATION of New Orleans
vs.
THE CRESCENT CITY LIVE STOCK LANDING and Slaughter House Co.
} No. 2505.

THE UNITED STATES OF AMERICA, *State of Louisiana:*

The President of the United States to The Crescent City Live Stock Landing and Slaughter House Company, greeting:

You are hereby cited and admonished to be and appear at a
108 Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein The Butchers' Benevolent Association of New Orleans is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy.

(Signed) JOS. P. BRADLEY,
Asso. Justice Sup. Ct. U. S.

Marshal's return.

Received, May 18, 1870, by the U. S. marshal, and on the same day, month, and year served a copy of the within citation on the within-named Crescent City Live Stock Landing & Slaughter House Company, through F. J. Pratt, president thereof, by delivering the same to him, said Pratt, in person, at his office, corner of Common and Caroudelet streets, in this city.

New Orleans, May 18th, 1870.

(Signed) S. W. REED,
D'y U. S. Marshal.

Supreme court.

Filed June 1st, 1870.

(Signed) M. P. JULIAN, *Dep'y Clerk.*

109 *Certificate of the clerk.*

UNITED STATES OF AMERICA,
Supreme Court, E. D., State of Louisiana:

I, M. P. Julian, deputy clerk of the supreme court of the State of Louisiana for the eastern district, do hereby certify that the foregoing one hundred and eight (108) pages contain a true copy of the transcript of the proceedings had in the sixth district court for the parish of Orleans, in a certain suit wherein The Butchers' Benevolent Association of New Orleans was plaintiff, and The Crescent City Live Stock Landing & Slaughter House Company was defendant, and also of the proceedings had in this supreme court on the appeal taken by said Crescent City Live Stock Landing and Slaughter House Company; which appeal is now on the files thereof under No. 2505.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at the city of New Orleans, this first day of August, A. D. 1870, and in the ninety-fifth year of the independence of the United States of America.

[SEAL.] M. P. JULIAN, *Deputy Clerk.*

110 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court before you, between The Butchers' Benevolent Association of New Orleans, plaintiffs, and The Crescent City Live Stock Landing & Slaughter House Company, defendants, a manifest error hath happened, to the great damage of the said Butchers' Benevolent Association of New Orleans, as by their complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause

further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this thirteenth day of May, in the year of our Lord one thousand eight hundred and seventy.

[SEAL.]

D. URBAN,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) Supreme court of Louisiana. No. 2505. The Butchers' Benevolent Association of New Orleans versus The Crescent City Live Stock Landing & Slaughter House Co. Writ of error.

Allowed May 13th, 1870.

JOS. P. BRADLEY,
Asso. Justice Sup. Ct. U. S.

Filed May 16th, 1870.

M. P. JULIAN,
Dep'y Clerk Sup. Court State of La.

(Indorsement on cover:) No. 476. The Butchers' Benevolent Association of New Orleans, plaintiffs in error, vs. The Crescent City Live Stock Landing and Slaughter House Co. Louisiana sup. court.

Filed 30th August, 1870.